

ORDER ON EXH. 1 IN REFERENCE OF EXH.26
IN R.C.S. No. 80/2021

Defendant seek rejection of plaint vide Order 7 Rule 11 read with section 151 of the Civil Procedure Code.

2] According to defendant this suit has filed for permanent injunction. Plaintiff filed suit for property mentioned for block no.56 for the property of 7 H 45 R. As per his contention, plaintiff is owner and possessor of suit field but talathi filed the application under section 155 of Maharashtra Land Revenue Code for correction of clerical errors in the gut no.56 of said disputed property. As per application policy of Government DILRMP for digital 7/12. It is submitted that talathi filed report with respect of it. Then Tahsildar, Risod allowed report of Talathi, Risod. Tahsildar, Risod allowed to make correction in records of gut no.56 villegge Dhodap, Tq. Risod, Dist. Washim. From order it is seen that plaintiff is just having 0.14 R land in gut no. 56. Hence, now there is not having or does not exist any cause of action.

3] As per report of Talathi and order of Tahsildar, Risod in respect of gut no. 56 come to know that if plaintiff is not having land in gut no.56 other than 0.14 R. It means that suit property not in possession of plaintiff as he mentioned in his plaint. Hence plaintiff does not exist cause of action. The plaint is liable to be rejected under the provisions of Order 07 Rule 11 of Code of Civil Procedure, 1908. As the plaint does not disclose within itself the cause of action. Without any prejudice towards the assertions made by the defendant the instant suit does not have jurisdiction. Plaint

does not disclose the publication of the impugned, cause of action against the plaintiff, all assertion of plaintiff is false and frivolous against the defendant. As per provision of Order 07 Rule 11 (a) of Code of Civil Procedure plaintiff is liable to be rejected when it does not disclose a cause of action in itself. The deliberate making of statements in support of plaintiff made by defendant is indicative of the fact that plaintiff has malafide intentions.

4] Defendant further stated that, plaintiff failed to mention properly entitlement of property as per para no. 02 of plaint, prudent man can not understand the contention of plaintiff. Filing of suit without cause of action, it is perceived as an abuse of the process of the court. Without a cause of action, a civil suit can not arise. It is necessary because it discloses the facts that led the plaintiff to take such action. The cause of action is a set of allegations or facts which make up for grounds of filing a civil suit in the court. One instance of the mention of cause of action is under Order II Rule 2 of the Code. Therein, it has been stated that for the purpose of instituting a suit, the cause of action needs to be explicitly mentioned in the plaint.

5] The ld. advocate for defendant has relied and as per his contention the Hon'ble court held in *T. Arivandandam Vrs. T. V. Satyapal* that reading of averments in the plaint should not only be formal but also meaningful. Having said that, if the plaint is filed in a witty manner and creates the illusion that there is a cause of action, but when read carefully, it is crystal clear there is no cause of action in the plaint, the court has to exercise it's power conferred under Order 07 Rule 11 of C.P.C.

6] The ld. advocate for defendant has also relied on and as per his contention the Hon'ble court held in ***Dahiben Vrs. Arvinbhai Kalyani Bhanusali (2020)*** In this case, both the trial court as well as the Hon'ble High Court of Gujrat rejected the application of plaint and aggrieved party approached the Supreme Court for this matter and even in the Apex court, the same decision was reached.

However, the court went a little further and defined the true essence of Order 07 Rule 11. The court, while citing the Rajiv Gandhi Case, expressed that the main purpose of Order VII Rule 11 is to reject meaningless and vexatious litigation, thus, saving the time of the judiciary. It also made the observation that all the documents submitted along with the plaint under Order VII Rule 14 must be considered as a whole and a part of the plaint. Furthermore, it was enunciated that if the court finds that the suit is meaningless or is vexatious and lacks merit, it has the power to reject plaint. Moreover, if it is established that the plaint is cleverly drafted and creates an illusion of cause of action, it should be rejected to end such bogus litigation at the earliest stage.

7] The plaintiff has given his say on overleaf of this application and opposed the application. Application is not maintainable.

8] Heard Ld. Advocates, M.K. Undal for plaintiff and V. J. Gavli for defendant of both sides. Arguments are set forth in consonance of the application and the say.

9] The defendant seek rejection of plaint on jurisdiction

ground. According to defendant the plaint needs to be rejected because there is no cause of action in plaint and therefore civil court can not decide the suit. Foremost objection of the defendants is bar of jurisdiction vis-a-vis relief claimed by the plaintiff.

10] The ld. advocate for plaintiff has relied on ***Mrs. Sicily Varghese Kadamthottu Vrs. Shri Ramanlal Jayshankar Trivedi (D) Thr. LRs. And Another [2022 (3) ALL MR 579]*** It is stated by Hon'ble Bombay High Court in para 02 that, at the outset, it may be stated that the learned trial court, fell in error, in exercise of the jurisdiction, by rejecting plaint under Order 07 Rule 11 (d) of Code, after framing the issues. Law, is to reject the plaint, for the suit being barred by any law under Order 07 Rule 11 (d) of the Code, the court needs to be guided by averments in the plaint and not the defence taken. Herein, plaint was rejected after framing the issues. On this ground alone, appeal deserves to be allowed by quashing the 'Deemed Decree' passed in Suit no. 3049 of 995. However, having regard to the facts of the case, I deem it appropriate to deal with certain issues arose for consideration in this appeal.

11] Defendant has filed list of document along with Exh.27 the report of Talathi and order of Tahsildar. On perusal of order of Nayab Tahsildar it appears that, on name of Kisan Jayaji Khandare there is 14 R land in gut no.56. In presence of Tahsildar, the talathi of mouje Dhodap has filed report and statement of land holders in gut no.56, on name of Kisan Jayaji Khandare there is 14 R agricultural land.

12] From plaint it is clear that, the plaintiff seeks permanent

injunction. The suit property is field property Block no.56 07 H 45 R out of it only 01 H 07 R land. The plaintiff is owner and possessor of suit field. He has received above suit land from Kisan Jayaji Khandare vide registered gift deed dated 02/12/2020 and received possession on basis of it. In gift deed 02/12/2020 due to oversight mistake the four boundaries of suit property is not mentioned in said document and therefore again on 21/12/2021 Kisan Jayaji khandare executed a registered document vide document no.4055/2021 known as a document of chuk durusticha lekh by showing the four boundaries of the suit property.

13] Defendant's filed written statement cum reply to Exh.05 vide Exh.13 and denied claim of plaint and stated that suit property never owned and possessed by either of plaintiff or his predecessor in title namely Kisan Jayaji Khandare.

14] So far as instant application is concerned the defendant seeks rejection of plaint vide Order 7 Rule 11 (a) of the Civil Procedure Code. So far as jurisdiction of court is concerned the plaint clearly shows that according to defendant there is no cause of action.

15] The learned advocate for defendant argued that, there is no subject matter existed. Therefore present suit is not maintainable. On the contrary ld. advocate for plaintiff argued that there is cause of action mentioned in plaint. The suit property is exit or not is to be decided after recording of evidence and not at this stage.

16] Here it is necessary to point out the relevant provision of

Code of Civil Procedure. Considering the point of jurisdiction of civil court it is necessary to see section 09 of Code of Civil Procedure. It is concerning with jurisdiction of civil court. Jurisdiction means power of the court to hear and decide the case.

17] Section 9 of Code of Civil Procedure provides as follows :
Section 9 Courts to try all civil suits unless barred : The courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation (I) A suit in which the right to property or to an office is contested is suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to the religious rites or ceremonies.

Explanation (II) For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation (I) or whether or not such office is attached to a particular place.

18] The civil court has jurisdiction to try the suit if two conditions are fulfilled :-

1. The suit must be of civil nature.
2. The cognizance of such a suit should not have been expressly or impliedly barred. The suit is said to be expressly barred if it is barred when it is barred by general principle of law. The question of jurisdiction is to be decided upon the contentions raised in the plaint.

19] Order 07, Rule 11 of Code of Civil Procedure provides :

Order 07, Rule 11 Rejection of plaint : The plaint shall be rejected in the following cases : -

- (a) Where it does not disclose a cause of action ;
- (b) -----
- (c) -----
- (d) -----
- (e) -----
- (f) -----

20] Here it is necessary to point out the relevant provision of Specific Relief Act.

Section 38 of Specific Relief Act as follows :

Section 38 Perpetual injunction when granted :

- (1) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.
- (2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.
- (3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely :-
 - (a) where the defendant is trustee of the property for the plaintiff ;
 - (b) where there exists no standard for ascertaining the actual

- damage caused, or likely to be caused, by the invasion ;
- (c) where the invasion is such that compensation in money would not afford adequate relief;
 - (d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

21] Plaintiff filed suit under the provisions of Specific Relief Act, 1963. This court has power under section 09 of Code of Civil Procedure. The defendants are trying to disturb possession of plaintiff over suit property. Hence, to protect his rights, this suit has been filed for permanent injunction. The Specific Relief Act provides equitable and common relief.

22] Upon close scrutiny of plaint, it is seen that plaintiff have mentioned in the plaint that cause of action arose on dated 26/07/2021. Therefore, it can not be said that the plaint does not disclose a cause of action. It is clear that, at the time of filing of suit there is cause of action exist. It is true that cause of action is nothing but bundle of facts which gives the plaintiff the right to sue. Upon perusal of plaint, it is seen that serious allegations have been levelled against defendant. Therefore, triable issues are involved in the present suit. In the result, at this stage, it can not be said that the cause of action mentioned by plaintiff in the plaint is illusory one. Therefore, the plaint is not liable to be rejected under Order 7 Rule - 11 of Code of Civil Procedure. For invoking the provisions of order 7 Rule 11 (a) of C.P.C. it is necessary for the defendant to make out a case that a suit is barred on the basis of statement in plaint. At this stage, it is not permissible to go into the defence that can be raised in

the written statement.

23] In these circumstances, the subject matter exist or not need to considered or determined after full fledge of trial or evidence placed on record. Furthermore, the merits and demerits of the matter can not be gone into at this stage. So fact in respect of suit property exist or not is essential facts and it requires evidence and full fledge trial of suit. Without full fledge trial only document of order of Tahsildar and Talathi and averments in it can not be consider at this stage, particularly, in perview of Order 07 Rule 11 (a) of C.P.C. Several other factual aspects are need to be consideration, same can be done at the time of full fledge trial only. In my opinion ground taken by defendant are not of much importance and this ground may be taken into account on merit after full fledge of trial and after recording evidence.

24] It is well settled that while considering the application under order 07 Rule 11, it is necessarily to take into consideration in the entire averment in the plaint as a whole. It is settled that, while deciding application under VII Rule 11 of C.P.C., the court is not required to consider defence of other side, or documentary evidence given by defendants on merits, unless appropriate issues are framed and parties are allowed to lead evidence in this behalf. Further, the averments in the plaint are required to be treated as to whole considering an application under Order 07 Rule 11 of C.P.C. The court can not look into defence of the defendant.

25] Thus in view of the matter I am of the opinion that the

plaint of plaintiff can not be rejected at this juncture. For the purpose of finding of cause of action leading of evidence is necessary. Hence, considering all above facts and circumstances of the case, I find that the contention and citations relied by defendant is not applicable to this case. Considering all above discussion, I am of the opinion that the application of defendant needs to be rejected. Hence, I pass following order.

ORDER

1. Application is rejected.
2. Costs in cause.

Date: 05/09/2024.

(Smt. P. M. Kamble)
2nd Jt. Civil Judge, Jr. Dn., Risod.

Certificate

I affirm that, the contents of this PDF file Order/Judgment are same word to word, as per original Order/Judgment.

Name of Stenographer :- Prashant K. More, (Grade-III)

Court :- 2nd Jt. C.J.J.D. & J.M.F.C., Risod.

Date :- 05/09/2024

Judgment/Order signed by
the Presiding Officer :- 05/09/2024

Judgment/Order uploaded on :- 05/09/2024