

**BEFORE THE HON'BLE ADDITIONAL SENIOR CIVIL JUDGE &
ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT AT VANTHLI**

Order Below exh.17

in

Regular Civil Suit No.10/2025.

[1] The present application is filed by the defendant invoking the provisions of Or. 7, R. 11 of Code of Civil Procedure requesting the Hon'ble Court to reject the plaint being devoid of cause of action and barred by law of Limitation.

[2] It is say and contention of Learned Advocate for the defendant that plaintiff has suppressed the material facts like plaintiff having executed sale deed of the suit land in favour of defendant no.1 in the year of 2012 and therefore as the plaintiff has suppressed the said fact and is basing the suit on the ground of possession is untenable being devoid of clear right to sue and hence prayed to reject the present plaint.

[3] Per contra, the learned advocate for the plaintiff has argued that the suit is filed for protecting the possession and is not based on any document as plaintiff is having possession of the suit land since last 35 years. The present suit cannot be rejected as the possession is question of evidence and therefore prayed to reject the said application exh.17. Learned advocate for the plaintiff has not filed any reply to the said application exh.17.

[4] Before I incept to deal with this application exh.17, the law laid down by the **Hon'ble Apex Court** in the case of **T.Arivandandam Versus T.V.Satyapal**, reported in **1977 (0) AIJEL-SC 31368**, is required to be taken into account wherein **Hon'ble Apex Court** in **para 5** has observed as under :-

5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the Judgement of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court Bangalore, is a flagrant misuse of the mercies of the law in

receiving complaints. The learned Munsif must remember that if on a meaningful - not formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under O. VII R. 11, C. P. C. taking care to see that the ground mentioned therein is fulfilled. And, if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under O. X. Code of Civil Procedure. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi.

"It is dangerous to be too good."

5) Thus, as per the said judgment, if the plaint is manifestly vexatious, and meritless, not disclosing a clear right to sue, then the same is required to be nipped in bud by resorting to the provisions of Or. 7, R.11 of Code of Civil Procedure 1908. That clever drafting cannot prevent the plaint. Now, whether the plaint is cleverly drafted creating illusion is required to be checked. On careful reading of the plaint, it appears that plaintiff is nowhere able to show how he is holding the possession of the suit property. Para 4 of the plaint states that since last 35 years he is in possession of the suit property but he has not produced even a single document showing his possession. The documents produced by the plaintiff reflects the name of the defendant as owner of the suit property. Now, though this Court is very much conscious of the fact that the documents produced by the defendant are not to be looked into in deciding the application filed under Or.7, R. 11 of Code of Civil Procedure 1908, still if admitted documents are on record and not disputed by plaintiff, then the same can be looked into to decide as to whether plaintiff has clear right to sue or not.

6) Now, if Mark 20/1 is looked into, the same is a registered sale deed executed by the plaintiff in favour of defendant no.1. This document is suppressed by the plaintiff and in the plaint, nowhere even remotely mentioned that sale deed is executed by the plaintiff. Thus, the drafting is nothing but a clever drafting creating an illusion of the possession. When the plaintiff has already parted with the suit property in the year of 2012 by executing registered sale deed then the plaint is nothing but clever drafting which should be nipped in bud as per the law laid down by the **Hon'ble Apex Court** in the case of **T.Arivandandam Versus T.V.Satyapal**, reported in **1977 (0) AIJEL-SC 31368**.

7) Further, if the cause of action at para 9 is perused, then it reflects that plaintiff has resorted to police machinery as well as filed an application before the Mamlatdar and brought the issue of protection of possession of the plaintiff before them but as the said machineries didn't responded, the cause to file the present suit has arisen. Now, if the said cause of action is perused then plaintiff has nowhere stated how and in what capacity he is holding possession of the suit property. Thus, a flimsy cause of action is being created by the plaintiff which cannot at any stretch of imagination be construed clear right to sue. Therefore, when the plaintiff has not been able to even remotely show from the documents produced at mark 5/1 to 5/7 that plaintiff is holding possession, then said cause being a clever drafting cannot be borrowed and plaint is required to be nipped in bud being bereft of clear right to sue.

The argument canvassed by the learned advocate for the plaintiff that possession is a matter of evidence and therefore plaint cannot be rejected at this juncture cannot be borrowed as plaintiff has suppressed the fact of sale deed executed by him in favour of defendant. Further, it is a principle of law that possession follows title thus when the title is with the defendant then possession cannot be said to be with plaintiff and therefore in absence of any iota of evidence being produced by the plaintiff to show that he is holding the possession of the suit property, the plaint cannot be protected. The plaint in para 4 speaks that plaintiff has become owner by virtue of adverse possession but in the entire plaint, the plaintiff is silent who is the owner of suit property and when he has entered into the possession of the suit property in the

knowledge of the owner. Thus, merely by saying that plaintiff is in adverse possession cannot make the plaint to survive as plaintiff himself has executed the sale deed in the year of 2012 and till date has never challenged the same.

8) Thus, plaintiff has no clear right to sue and therefore in absence of any right of the plaintiff to sue, the plaint cannot survive being barred by provision of Or.7, R. 11(a) of Code of Civil Procedure 1908. Hence, plaint is required to be nipped in bud. Therefore, following order is passed below this application :-

-:: O R D E R ::-

1. The present application is hereby allowed.
2. The plaint is rejected under the provision of Or.7, R.11 (a) of C.P.C. 1908.
3. Decree be drawn accordingly.
4. No order as to costs.

Pronounced in the open Court today on this ^{10th} day of October, 2025.

Dt.10/10/2025

(L. I. Ingale)

Additional Senior Civil Judge,
Vanthali.

(Code -GJ01372)