

Received on :	25 th October 2018		
Registered on :	25 th October 2018		
Decided on :	30 th April 2019		
<u>Duration :</u>	00	06	05
	Years	Months	Days

In the Court of Principal District Judge at Vadodara

Regular Civil Appeal No.311 of 2018

Exh.:_____

Appellants:

Heirs of deceased Ramchandra Ranchhodbhai Barot

- (1) Hasmukhbhai Ramchandra Barot**
Age: 53 Years, Occupation: Agriculture
- (2) Arunaben Ramchandra Barot**
Age: 48 Years, Occupation: Household
Rs/o.Brahmin Falia,
Gotri, Vadodara.

Versus

Respondents:

- (1) Ramanbhai Mangalbhai Prajapati**
Age: Adult, Occupation: Business
R/o.Satyanarayan Society,
Gorwa, Vadodara.
- (2) Heirs of deceased Jesingbhai M Rabari**
- (2/1) Nileshbhai Jesingbhai Rabari**
Age: Adult, Occupation: Business
- (3) Narsinhbhai Narottambhai Udvasiya**
Age: Adult, Occupation: Business
- (4) Jalvantbhai Lalabhai Prajapati**
Age: Adult, Occupation: Business
- (5) Naisadh Indravadan Patel**

Age: Adult, Occupation: Business

(6) **Ramanbhai Ranchhodbhai Patel**

Age: Adult, Occupation: Business

(7) **Pallaviben Bhailalbhai Prajapati**

Age: Adult, Occupation: Business

(8) **Shaileshkumar Ravjibhai Patel**

Age: Adult, Occupation: Business

(9) **Heirs of deceased Bhailalbhai Punjabhai Prajapati**

(9/1) **Jashvantbhai Bhailalbhai Prajapati**

Age: Adult, Occupation: Business

(10) **Ramanbhai Chaturbhai Prajapati**

Age: Adult, Occupation: Business

(11) **Ravjibhai Rancchodbhai Patel**

Age: Adult, Occupation: Business

(12) **Haribhai Nathabhai Patel**

Age: Adult, Occupation: Business

(13) **Upendrabhai Dalsukhbhai Prajapati**

Age: Adult, Occupation: Business

(14) **Hasmukhbhai Ramanbhai Prajapati**

Age: Adult, Occupation: Business

(15) **Nileshbhai Chandubhai Patel**

Age: Adult, Occupation: Business

All residing at:

C/o.Ramanbhai Mangalbhai Prajapati

Satyanarayan Society,

Gorwa, Vadodara.

Appearance:

Mr.HM Patel – Ld.Advocate for the appellants

Mr.BM Shah – Ld.Advocate for the respondent no.1, 2, 4, 7, 10, 13 & 14

Rest of the respondents served, but did not appeared

Respondents no.3, & 11 are expired, and this appeal against them is abated

**Appeal under Section 96
of The Code of Civil Procedure, 1908**

| J U D G M E N T |

1. In Regular Civil Suit No.706 of 2003, exercising powers under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short “CPC”), learned 4th Additional Civil Judge, Vadodara (for short “Trial Court”), by passing common order below Exh.60 and Exh.73, rejected the plaint of the plaintiffs. Being aggrieved by and dissatisfied with the impugned order, unsuccessful plaintiffs have filed present appeal under Section 96 of the CPC. Since Ld.Advocates for both the side entreat this court for final hearing and also filed Written Arguments respectively, this appeal is taken for final hearing.
2. For better convenience, parties hereto shall be referred to as their status before the learned trial court.
3. **Briefly stated facts of the present case:**
 - i. That the plaintiffs by way of Regular Civil Suit No.706 of 2003 prayed that they be declared owners & occupiers of the land admeasuring about 4700 Sq.Mtrs., being excess land of Revenue Survey No.125.2, 119, 126 & 138 of village Gotri, Ta.Dist.Vadodara with further declaration that defendants have no right whatsoever in this parcel of land. Perpetual injunction was also sought that the defendants be restrained from interfering with possession of the plaintiffs *qua* this parcel of 4700 Sq.Mtrs. land.
 - ii. Plaintiffs came out with the case that deceased Ranchhodbhai Barot was the owner & occupier of land admeasuring about 15782 Sq.Mtrs., consisting of Revenue Survey No.125.2 (10117 Sq.Mtrs.), 119 (1365 Sq.Mtrs.), 126 (809 Sq.Mtrs.) and 138 (3541 Sq.Mtrs.) of village Gotri, Ta.Dist.Vadodara; out of this land, land approximately admeasuring about 4288

Sq.Mtrs. Was acquired for the purpose of widening the road. After ULC proceedings in regard to this land, freehold land declared by the concerned authority was 10670 Sq.Mtrs., out of which, land admeasuring about 192 Sq.Mtrs. was deducted as construction was there. Thus, there was 10487 Sq.Mtrs. freehold land.

- iii. It is further case of the plaintiffs that one POA was executed *qua* this land on 12/12/1991 in favour of Bhailalbhai Punjabhai Prajapati, Ramanbhai Chaturbhai Prajapati etc. One Agreement to Sale was executed by the POA in regards to this land and plaintiffs have received sale consideration also. It was decided that out of total freehold land, defendants were permitted to hold 10487 Sq.Mtrs., and the agreement executed was only for the purpose of said land, but, since alignment for making road changed, the land admeasuring about 4288 Sq.Mtrs., become freehold land, for which, no any kind of agreement was ever executed. So, the plaintiffs claim title and possession over land admeasuring about 4288 Sq.Mtrs., saying that it was never a part of any transaction, but the defendants tried to sell out this land to third party, and therefore, since the plaintiffs have cancelled the POA executed in favour of its holder, now, no one has authority over this freehold land, and therefore, the plaintiffs filed suit for declaration and permanent injunction.
- iv. In the said suit, defendants have preferred applications vide Exh.60 and Exh.73 under Order VII Rule 11 of the CPC for rejection of plaint on the ground of no real cause of action is purported. The learned Trial Court having given opportunity to both the side for hearing, reached to the conclusion that no meaningful cause of action has been stated by the plaintiffs; moreover, the plaintiffs have suppressed material facts which they were required to plead in the plaint and that the entire suit is frivolous and vexatious, and if allowed to continue, will amount to abuse of process of law, and therefore, the learned trial court has rejected the suit under Order VII Rule 11 of the CPC.

- v. Questioning the impugned order, unsuccessful plaintiffs have preferred present appeal *inter alia* on the grounds mentioned in Memo of Appeal.
4. During the pendency of this appeal, respondents no.1, 2, 4, 7, 10, 13 & 14 vide pursis Exh.7 declared that respondent no.3 – Narsinh Narottam Udvadiya has expired and his heirs are not brought on record. Identically, respondent no.9 - Bhailalbai Punjabhai Prajapati has also expired, but heirs – Jasvantbai Bhailalbai Prajapati and Pallaviben Prajapati are alive, but they are not brought on record; identically, respondent no.11 – Ravjibhai Ranchhodbhai Patel has also expired and his heirs are also not brought on record. Then, another pursis was filed vide Exh.10 by above noted respondents praying that since respondents no.3, 9 and 11 are died, the present appeal *qua* them be abated. In spite of these two pursises on record, appellants didn't do anything to bring heirs of deceased respondents on record, and therefore, even without specific order of this Court, present appeal against respondents no.3 and 11, is abated and the impugned order *qua* them is made absolute. Son of deceased Bhailalbai Punjabhai Prajapati is brought on record vide Mark-9/1.
5. In backdrop of above facts, the appellants & respondents have filed Written Arguments vide Exh.11 and Exh.12, respectively.
6. In Written Arguments, Ld.Advocate appearing for the appellants mainly submitted that the learned trial court has failed to consider averments made in Exh.1 in its true

perspective; that the learned trial court without considering evidence on record, passed order of rejection and it is illegal order; that the learned trial court has unnecessarily given importance to judgment delivered by the Hon'ble Supreme Court reported in AIR 1977 2421; that the learned trial court failed to understand provisions of Order VII Rule 11 of the CPC while rejecting the plaint; that the learned trial court has given unnecessary importance to earlier filed Special Civil Suit No.349 of 1996 and 281 of 2010; that the learned trial court has erred in interpreting the provisions of law, and thereby, has committed error. It is also argued that if the plaintiffs were permitted to go through the trial, they would have succeeded in proving their averments, and therefore, it is requested that threshold rejection of the suit be cured by allowing this appeal and the suit be restored back to original proceeding for the purpose of trial.

7. On the contrary, in Written Arguments, respondents supported impugned order and further submitted that the plaint on meaningful reading, does not disclose real cause of action and the plaint was fabricated on jugglery and manipulation of words, and since it does not disclose real & germane cause of action, the suit was required to be rejected, and had rightly been rejected by the learned trial court. Upon such arguments, it is sought to submit that the present appeal be rejected with throughout cost.
8. Regard being had to rival submissions of Ld.Advocates for both the side, a very short issue arise for determination of this appeal that (1) Whether the learned trial court materially

erred in rejecting plaint of the plaintiffs under Order VII Rule 11 of the CPC? **(Answer: In negative)** and (2) What order? **(Answer: As per final order).**

9. Regard being had to rival submissions of Ld. Advocates for respective party, needless to observe that power under Order VII Rule 11 of the CPC can be exercised by the court at any point of time. It is an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. The real object of Order VII Rule 11 of the CPC is to keep out of courts irresponsible law suits. If by surfacing averments of the plaint, in case the court *prima facie* finds that the suit has no real cause of action or it is barred by provisions of law, and allowing it is an abuse of the process of the court, in the sense that it is bogus and irresponsible litigation, the jurisdiction under Order VII Rule 11 of the CPC is to be called and exercised.
10. Indeed, the word “Cause of Action” is defined nowhere in the Code of Civil Procedure, 1908, however, it can be said that ‘cause of action’ mean the whole bundle of material facts which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit. The Court at the time of deciding whether there is real cause of action or superficial cause of action, has to find out from the allegation of the plaint itself as to whether a bogus, wholly

vexatious or frivolous litigation is sought to be initiated under the attire of ingenuous drafting of the plaint or not, because it is the duty of the Court to guard itself against the mischief of a litigant misusing the process of Court by entering into a false litigation merely for the purpose of harassing the other party. The Court on finding such kind of litigation, has to nip in the bud the litigation which is sham and shabby in character. In order to find out whether the plaint discloses a real cause of action or not, the averments made in the plaint and documents annexed thereto should be scrutinized meaningfully and if on such scrutiny it is found that the plaint does not disclose cause of action, it has got to be rejected in view of the provisions of Order VI R.11(a) of the CPC.

11. In case of **Mohan Vs. Damodar (1994) 2 SCC 392**, the Hon'ble Supreme Court observed in regards to "reasonable cause of action" that reasonable cause of action is said to mean a cause of action with some chances of success when only the allegations in the pleadings are considered. The failure of the pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars.
12. In case of **Maharaj Shri Manvendrasinhji Ranjitsinhji Jadeja Vs. Rajmata Vijaykunverba Wd/o. late Maharaja Mahendrasinhji [1998 (2) GLH 823]**, Division Bench of the Hon'ble High Court of Gujarat held in para 14 that:

“14... Having noticed brief summary of the plaint and prayers earlier, it would be relevant to refer to the provisions of Order VII Rule 11(a) of the CPC and the scope thereof. Order VII Rule 11(a) of the

CPC provides that the plaint shall be rejected in case where it does not disclose a cause of action. Order VII Rule 11(a) of the CPC is mandatory and if it is found that the plaint does not disclose a cause of action, the Court has no option but to reject the plaint. To find out whether a plaint discloses a cause of action or not, the Court has to look only to the averments made in the plaint. When a plaint is based on a document filed along with the plaint, it can, however, be considered to ascertain if plaint discloses any cause of action. Cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. The words "cause of action" mean the whole bundle of material facts which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit. What is to be done by the Court at the stage of deciding as to whether the plaint discloses any cause of action or not is to find out from the allegation of the plaint itself as to whether a bogus, wholly vexatious or frivolous litigation is sought to be initiated under the garb of ingenuous drafting of the plaint or not because it is the duty of the Court to guard against the mischief of a litigant misusing the process of Court by entering into a false litigation merely for the purpose of harassing the other party and to nip in the bud the litigation which is sham and shabby in character. In order to find out whether the plaint discloses a cause of action or not, the averments made in the plaint and documents annexed thereto should be scrutinized meaningfully and if on such scrutiny it is found that the plaint does not disclose cause of action, it has got to be rejected in view of the provisions of Order VII Rule 11(a) of the CPC. When it is said that the Court should take into consideration the averments made in the plaint for the purpose of deciding the question whether the averments made in the plaint disclose cause of action or not, it does not mean that the Court is precluded from applying the statutory provisions or case-law to the averments made in the plaint. If an assertion made

in the plaint is contrary to statutory law or case-law, it cannot be considered as disclosing cause of action. In ITC Ltd. (supra), bank had filed suit against the appellant and others and claimed relief for a sum of Rs.52,59,639-66 ps. After the suit was filed, it was transferred to the Debt Recovery Tribunal. Before the Tribunal, an application was filed by the appellant under Order VII Rule 11 of the CPC for rejecting the plaint, so far as appellant was concerned, on the ground that no valid cause of action had been shown against the appellant. That application was rejected by the Tribunal. Against the said order, an appeal was filed before the Debts Recovery Appellate Tribunal. The appeal was dismissed in limine. Thereupon a writ petition was filed by the appellant, which was dismissed holding that the question should be decided at the trial. Against that judgment, the appellant had filed an appeal before the Division Bench of the High Court, which was also dismissed. The matter was thereafter carried before the Supreme Court. After taking into consideration the decided cases on the point whether there was fraudulent movement of goods under which letter of credit was obtained which in turn entitled the bank to file the suit, the Supreme Court held that that point was already decided by decision of the Supreme Court in U.P. Co-operative Federation's case and therefore the allegation of non-supply of goods by the sellers to the buyers did not by itself amount, in law, to a plea of "fraud" as understood in this branch of the law and hence by merely characterizing alleged non-movement of goods as "fraud", the bank was not entitled to claim that there was a cause of action based on fraud or misrepresentation. While allowing the appeal, what is emphasized by the Supreme Court is that the question whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order VII Rule 11 of the CPC has to be decided with reference to averments made in the plaint and clever drafting creating illusions of cause of action are not permitted in law

and a clear right to sue should be shown in the plaint. In view of this decision of the Supreme Court, it is evident that if something purely illusory has been stated with a view to get out of Order VII Rule 11 of the CPC by resorting to clever drafting, it cannot be said that the plaint discloses a cause of action and if a clear right to sue is not shown in the plaint, it is liable to be rejected.”

13. Reference can also be made to famous case of **T Arivandandam Vs. TV Satyapal [1977 AIR SC 2421]**. While considering the provisions of Order VII Rule 11 of the CPC, in para 5, the Hon'ble Supreme Court observed thus:

“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 judgment 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 plaints. 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 Order VII Rule 11 of CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever, 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 Order X of CPC. An activist Judge is the answer to irresponsible law suits. The trial Court should insist imperatively on examining the party at the first bearing so that bogus litigation can be shot down at the earliest stage. The Penal Code (Ch.XI) is also resourceful enough to meet such men, and must be triggered against them. In this case, the learned Judge to his cost realized what George Bernard Shaw remarked on the assassination of Mahatma

Gandhi "It is dangerous to be too good."

14. In case of **ABC Laminart Pvt. Ltd. Vs. AP Agencies, Salem [(1989) 2 SCC 163]**, the Hon'ble Supreme Court in para 12, observed as under:

“12... A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.”

15. In **ITC Ltd. Vs. Debts Recovery Appellate Tribunal [(1998) 2 SCC 70]**, it is held by the Hon'ble Supreme Court that the basic question to be decided while dealing with an application filed under Order VII Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order VII Rule 11 of the Code.
16. In case of **Sopan Sukhdeo Vs. Assistant Charity Commissioner [(2004) 3 SCC 137]**, it is observed by the Hon'ble Supreme Court that the Court has to see whether a

real cause of action has been set out in the plaint or something purely illusory has been stated in order to get around Order VII Rule 11. Vexatious or meritless cause of action cannot be entertained. If clever drafting has created the illusion of a cause of action it has to be nipped in the bud.

17. Very recently, in case of **Raghwendra Sharan Singh Vs. Ram Prasanna Singh (dead) by LRs (Civil Appeal No.2960 of 2019)** the Hon'ble Supreme Court after referring the above precedent held that if the suit is barred by provisions of law or does not have real cause of action, has to be rejected under Order VII Rule 11 of the CPC.
18. In backdrop of above legal aspect, if we go through averments made by the plaintiffs / appellants, it is undisputed that in the plaint, plaintiffs have not mentioned about previous unsuccessful litigations viz. Special Civil Suit No.349 of 1996 and Special Civil Suit No.281 of 2010. Even no reason is pleaded for not mentioning earlier suits and it's result. Appeal is also subsilent on the very issue. The plaintiffs were required to aver about these suit and their outcome. It is the plaintiffs' bounden duty to aver about these litigations, but this fact was brought on record by the defendants, which otherwise has to be part of the plaintiffs' pleading. These two suits *qua* disputed land run against the plaintiffs, and since this fact is suppressed by the plaintiffs, plaintiffs are not entitled to get any kind of relief. It is settled principle of law that person indulge in sinful act or *suppressio veri* equivalent to *suggestio falsi*. Truth alone

prevail and become foundation for pure justice. Suppression of truth or suggestion of false lead to sabotage of equity. Person indulge in, is not entitled for any relief from the court. It is further to be mentioned that the plaintiffs in their plaint para 5, clearly mentioned that they have sold out the suit land to third party, which is shown in tabular format as below:

Sr. No.	Survey No.	Sale Deed Registration Number	Year of registration
1.	125/2, 119, 126 & 138	17643 dated 12/12/1991	1991
2.	125/2, 119 & 138	5597 dated 30/10/1996	1996
3.	125/2, 119 & 138	5619 dated 30/10/1996	1996
4.	125/2, 119 & 138	5671 dated 30/10/1996	1996
5.	125/2, 119 & 138	5710 dated 30/10/1996	1996
6.	125/2, 119 & 138	5785 dated 30/10/1996	1996
7.	125/2, 119 & 138	5831 dated 30/10/1996	1996
8.	125/2, 119 & 138	5869 dated 30/10/1996	1996
9.	125/2, 119 & 138	5870 dated 30/10/1996	1996
10.		4826 & 4827 dated 06/09/1999	1999

- 19.** Now, the plaintiffs, upon which title, are claiming right upon suit land? Even plaintiffs have not asked relief for cancellation of sale deed. In such circumstances, plaintiffs absolutely failed to bring real cause of action on record. Not

only that, if we go through document which are produced by the plaintiffs, it contains selling of entire suit land i.e. land admeasuring about 15782 Sq.Mtrs. through POA, which the plaintiffs themselves have accepted. In that facts & circumstances, how the plaintiffs can be considered as owners & occupiers of the land admeasuring about 4288 or 4700 Sq.Mtrs., which became excess due to change in alignment of road. The plaintiffs are failed to disclose this aspect. The plaintiffs have sold suit land in the year 1996 and also received sale consideration thereof, and thus, the plaintiffs have lost all their rights & title over suit land, and therefore, the plaint in fact was filed on jugglery & manipulation of words stated to be cause of action. It is illusory, unreal and make believed on foundation of *suppressio veri* equivalent to *suggestio falsi*.

20. In case of **Church of Christ Charitable Trust & Educational Charitable Society Vs. Ponniamman Educational Trust [(2012) 8 SCC 706]**, the Hon'ble Supreme Court, in para 8, observed following:

“8... While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words “cause of action”. A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue”.

21. Therefore, it is much clear that the plaintiffs had repeatedly approached the court for the same issue. The court has for more than ones decided the same issue, but the plaintiffs again approach the court below with Regular Civil Suit No.706 of 2003, which was nothing but repetition, remained unsuccessful litigation. The cause of action stated in the plaint itself is inconsistent and it does not fall within real cause of action. In such circumstances, no alternative is left with this court, except to confirm learned trial court's order and to reject this appeal.
22. This judgment has witnessed appellants' unsatisfied hunger to repeatedly approach civil court under pretext of one or other word, or wrapping fine words as cause of action to litigate issue previously decided. This is purely injuring fountain of justice and is therefore calling to quantify realistic cost also.
23. Resultantly, answering above issue accordingly, I pass following order:

| O R D E R |

- (1) This Regular Civil Appeal FAILS and is accordingly DISMISSED with throughout cost.
- (2) Interim relief, is any, stands vacated.
- (3) This court quantify realistic cost of Rs.5,000/- (Rupees Five Thousand only) to be paid by the appellants / plaintiffs in District Legal Services Authority, Vadodara.
- (4) The impugned common order dated 03/04/2018 passed by the learned Trial Court below Exh.60 and Exh.73 in Regular Civil Suit No.706 of 2003, is hereby confirmed & upheld. Consequent order below

Exh.1 rejecting plaint is made absolute.

- (5) Decree be drawn accordingly.
- (6) R & P of Regular Civil Suit No.706 of 2003 be hand back to learned Trial Court along with copy of this judgment, immediately.

**Pronounced in the open Court, today on this
30th day of April, 2019**

**Sd/-
(Jitendra C Doshi)
Principal District Judge
Vadodara
UID Code No.GJ00909**

Jay Chauhan