

Leave granted. Heard the parties.

2. The appellant is the twelfth defendant in a money-suit (Suit No. 12/2004) filed by respondents 1 and 2, for recovery of Rs.2,69,81,660 with interest.

3. The case of the plaintiffs (respondents 1 and 2) in the plaint is that the second defendant, who was their employee, along with his accomplices (defendants 4,5 and 8) had misappropriated huge amounts by playing fraud. It was also alleged that by utilising a part of the misappropriated funds, the fourth respondent purchased a shop premises and subsequently sold the said shop to 12th defendant (the appellant herein).

4. The only reference to the appellant (defendant No.12) in the plaint, is found at paragraph 42 of the plaint and the said paragraph is extracted below in entirety :

"That no consideration whatsoever was involved in the alleged sale claimed to have been made by defendant No. 4 in respect of shop bearing No. SF-5 referred to above. The said shop is claimed to have been sold to defendant No. 12 who is a relative of defendant No. 4 vide alleged sale deed dated 21.11.2003 (appended to the plaint as Annexure-29). The aforesaid sale deed is absolutely void ab-initio, non-est, nullity, illegal, without consideration and does not confer any right, interest or title in favour of defendant No. 12 in respect of shop subject matter of the aforesaid sale deed. This shop deserves to be immediately attached and sold to realize the amount individually and jointly outstanding and payable by the defendants to the plaintiffs."

5. The appellant filed an application under Order 7
Rule 11 of the Code of Civil Procedure ('CPC' for short) for rejection of the plaint as against her on the ground the suit did not disclose any cause of action against her. She also stated that defendant No. 4 hailed from Orissa and she was from Uttaranchal, that she was not in any way related to fourth defendant, and that she had paid the consideration for the sale by cheque.

6. Defendants 2 and 3 also filed an application under Order 7 Rule 11 CPC. The trial court heard both the applications and dismissed them by a common order dated 16.11.2005. The appellant challenged the said order by filing a revision. Defendants 2 and 3 also challenged the said order by a separate revision. Both the revisions were dismissed by the High Court by a common order dated 24.11.2008. The said order is challenged by the appellant in this appeal by special leave.

7. What is significant is that the plaintiffs have added the appellant as twelfth defendant in a suit for recovery of Rs. 2,69,81,666/-, without disclosing any cause of action against her for claiming such a decree. They have not sought any relief in regard to the shop which has been sold by the fourth respondent to the appellant (twelfth defendant). Insofar as the prayer for recovery of money is concerned, there is absolutely no allegation against the appellant. The plaintiffs have not even alleged that the appellant was in any way connected with the misappropriation of the money. In the absence of any prayer with reference to the property which was purchased by the appellant (twelfth defendant) and in the absence of any averment in the plaint against the appellant's liability in regard to the suit claim, the plaintiffs cannot maintain the suit for recovery of money against the appellant. Even if all the plaint allegations are assumed to be true, no decree for money can be passed against the appellant, as the plaint does not show any cause of action against her. The case therefore squarely falls under Order 7 Rule 11(a) of CPC.

8. Unfortunately the High Court did not consider the matter with reference to the averments made in the plaint in respect of the appellant. The High Court erroneously

dismissed the appellant's revision petition on the assumption that the contention of the appellant was only in regard to territorial jurisdiction. The High Court also erred in clubbing the appellant's revision with the revision of defendants 2 and 3, when the averments against the appellant were completely different from the averments against second and third defendants in the suit.

9. We, therefore, allow the appeal, set aside the orders of the High Court and the trial court and allow the application under Order 7, Rule 11 CPC filed by the appellant before the trial court. As a consequence, the suit against the appellant (defendant No. 12) is dismissed under Order 7 Rule 11(a) CPC. Respondents 1 and 2 to pay costs of Rs. 10,000/- to the appellant.

J.
(R V Raveendran)

New Delhi;
November 13, 2009.

J.
(G S Singhvi)