

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

RFA No. 9/2022

Mohammad Maqbool Nath and Ors. ...Appellant/Petitioner(s)

Through: Mr. Wajid Mohammad Haseeb, Advocate

Vs.

Manzoor Ahmad and Ors. ...Respondent(s)

Through: Mr. Nisar Ahmad Bhat, Advocate for R-1 to 3 & R-5
Mr. Rouf Ahmad Parray, Advocate for R-4

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

ORDER
31.07.2025

1. Setting-aside of Order dated 05.03.2022 passed by the Court of 4th Additional District and Sessions Judge, Srinagar (for short "*the Trial Court*") in a suit titled "*Mohammad Maqbool Nath and Ors. vs. Manzoor Ahmad and Ors.*", whereby plaint of plaintiffs has been rejected under the provisions of Order 7 Rule 11 of CPC by holding that the plaintiffs have failed to disclose the cause of action, is sought for in this appeal precisely on the grounds that the plaint of the appellants and the documents placed with it clearly disclose cause of action; that the Trial Court has passed the impugned order without application of mind which suffers from infirmity and illegality and cannot sustain in the eyes of law and deserves to be set-aside.
2. The case set up by the appellants is that they have filed a suit titled "*Mohammad Maqbool Nath and Ors. vs. Manzoor Ahmad and Ors.*", in which respondents 1 to 4 have filed their written statements. During pendency of suit, one Mst. Misra Bano/respondent No.5 herein filed an application for arraying her as party, which was allowed arraying her as

defendant No.5. Thus suit amended. Thereafter, respondent No.5 filed an application in terms of Order 7 Rule 11 of CPC praying for rejection of plaint; to which appellants filed their objections. The Trial Court allowed application and rejected the plaint vide impugned judgement and decree dated 05.03.2022.

3. As is evident from record on the file, appellants had filed a suit for Specific Performance of Contract, Declaration Possession, Mandatory and Permanent Injunction for enforcement of agreement to sell executed by defendants 1 and 2 through their attorney-defendant No.4. Though there is no relief claimed by plaintiffs against the respondent No.5, yet she got herself impleaded as defendant on the application filed by her. However, she claimed to have interest in the property, therefore, sought impleadment. Amended plaint shows her one of the defendants.
4. It is pertinent to mention here that application under Order 7 Rule 11 CPC is to be decided on the basis of pleadings of the plaint inasmuch as a plaint is to be taken into consideration to find out as to whether it discloses cause of action or not. If it discloses cause of action, it will survive, or if it does not it is to be rejected. Law is settled that it is only what is pleaded in a plaint, that is to be taken into consideration for rejection or otherwise under and in terms of provisions of Order 7 Rule 11 CPC and not any other ancillary or rival contentions of other-side.
5. In the case in hand the plaint itself, on its perusal, would reveal that it discloses cause of action because decree for specific performance of a contract is sought on the ground that agreement to sell in respect of property in question had been executed by Attorney Holder of defendants 1 and 2, but it has not been acted upon as was agreed in

terms thereof, thus, plaintiffs sought its enforcement. In such circumstances, it is not the case where cause of action is not disclosed to warrant rejection of plaint under Order 7 Rule 11 of CPC.

6. Mr. Nisar Ahmad Bhat, learned counsel for respondents 1 to 3 & 5, when confronted with the pleadings of plaint, has fairly acceded that cause of action is disclosed. He, however, submits that the Trial court is required to frame issues including the preliminary issues in respect of pleas taken by him in the application and decide it expeditiously. He also submits that the matter may be remanded to the Trial court to frame issues including preliminary issues arise in the suit and also the question of maintainability raised by him.
7. In the aforesaid facts and circumstances of the case, the order impugned dated 05.03.2022 passed by the Trial Court rejecting the plaint of plaintiffs under the provisions of Order 7 Rule 11 CPC is **set-aside**. The suit is restored to its original number along with orders passed in all applications alongside thereto.
8. The matter is remanded to the Trial Court, which shall after hearing the parties afresh and recording their statements, frame issues including the preliminary issues as also the question regarding the maintainability as is raised by Mr. Nisar Ahmad Bhat, counsel for respondents 1 to 3 and 5, and decide it expeditiously.
9. The parties shall cause their appearance before the Trial Court on 11.08.2025.

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR

31.07.2025

Manzoor