[2023] 14 S.C.R. 153 : 2023 INSC 964

KUM. GEETHA, D/O LATE KRISHNA & ORS.
v.
NANJUNDASWAMY & ORS.

(Civil Appeal No. 7413 of 2023)

OCTOBER 31, 2023

[PAMIDIGHANTAM SRI NARASIMHA* AND SUDHANSHU DHULIA, JJ.]

Issue for consideration:

Correct application of the principle underlying the rejection of plaints u/Or.VII, r.11, Code of Civil Procedure, 1908, to the facts of the case and the legality of rejection of a plaint in part.

Code of Civil Procedure, 1908 – Or.VII, r.11 – Rejection of Plaints – Principle underlying – Application of – Plaintiffs and the Defendants no.1-3 were members of a joint family owning properties mentioned in Schedule A and B of the plaint – Plaintiffs filed plaint for partition and separate possession – Defendants' application for rejection of the plaint u/Or.VII, r.11, CPC was dismissed by Trial Court – High Court allowed the application in part, and rejected the Plaint with respect to Schedule-A property observing that the property described therein was sold way back in 1919 *via* a registered Sale Deed and the Plaintiffs did not deny the sale – Legality:

Held: The true test is first to read the plaint meaningfully and as a whole, taking it to be true – Upon such reading, if the plaint discloses a cause of action, then the application u/Or.VII,r.11 must fail – The plaint shall be rejected where it does not disclose a cause of action – In the present case, High Court committed error by examining the merits of the matter – It pre-judged the truth, legality and validity of the sale deed under which the Defendants No. 4 to 14 claim title – High Court could not have anticipated the truth of the averments by assuming that the alleged previous sale of the property is complete or that it has been acted upon – Approach adopted by the High Court is incorrect and contrary to the well-entrenched principles of considering an application u/Or.VII Rule 11 – High Court erred in rejecting the

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plaint in part with respect to Schedule-A property and permitting the Plaintiffs to prosecute the case only with respect to Schedule-B property – This approach is impermissible – Impugned the judgment passed in revision petition set aside – Application u/Or.VII, r.11 dismissed, the suit even with respect to properties mentioned under Schedule A of the Plaint restored. [Paras 7, 10-13]

Dahiben v. Arvindbhai Kalyanji Bhanusali **(2020) 7 SCC 366: [2020] 5 SCR 694; *Sejal Glass Ltd. v. Navilan Merchants (P) Ltd* (2018) 11 SCC 780: [2017] 7 SCR 557; *Madhav Prasad Aggarwal v. Axis Bank Ltd* (2019) 7 SCC 158: 2019 8 SCR 1058 – relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No.7413 of 2023

From the Judgment and Order dated 09.11.2015 of the High Court of Karnataka at Bengaluru in CRP No.158 of 2010.

P V Yogeshwaran, M. A. Chinnasamy, Mrs. C. Rubavathi, C. Raghavendren, V. Senthil Kumar, Devendra Pratap Singh, Ashis Upadhay, Advs. for the Appellants.

S. Nandakumar, Ms. Deepika Nandakumar, Ashok Kumar Singh, Rajeev Gupta, Naresh Kumar, Advs. for the respondents.

The Judgments of the Court were delivered by

PAMIDIGHANTAM SRI NARASIMHA, J.

1. Leave granted.

2. In this appeal, we are called upon to decide two questions. The first relates to the true and correct application of the principle underlying the *'rejection of plaints'* under Order VII Rule 11, Code of Civil Procedure, 1908[1], to the facts of the case. The second question relates to the legality of *rejection of a plaint in part.* For the reasons to follow, we have held that the High Court has committed an error in passing the order impugned, on both counts. First, by misapplying the

1 Hereinafter referred to as 'CPC'.

well-established principles informing Order VII Rule 11 of the CPC, and second, by rejecting the plaint in part, which is again contrary to the law on the subject. We have, therefore, allowed the appeal and dismissed the application under Order VII Rule 11, CPC. We will first indicate the necessary facts.

3. Mr. P V Yogeshwaran, learned counsel appearing for the appellants, assisted by Mr. M.A. Chinnasamy, Mrs. C Rubavathi, Mr. C Raghavendren, Mr. V Senthil Kumar, Mr. Devendra Pratap Singh and Mr. Ashis Upadhay submitted that the Plaintiffs along with the Defendants No. 1 to 3 are members of a joint family owning properties mentioned in Schedule A and B of the plaint. He has taken us through the plaint where it is averred that the *karta* of the family, late Shri Munivenkata Bhovi had many properties and was in a habit of temporarily mortgaging properties for raising finances by executing what are referred to as 'nominal sale deeds'. Once dues were cleared, reconveyance deeds were executed. It is specifically averred that this practice was adopted by the *karta* to maintain the family and the persons in whose favour these documents were executed were also close acquaintances of the family. As such, the possession of the joint family properties was never parted. It is also pleaded that when the Plaintiffs asked for partition, initially the Defendants did not deny it, but instead, only asked the Plaintiffs to wait till the revenue records were updated so that actual partition could be effected. Hence, Plaintiffs presented a plaint for partition and separate possession.

4. Four years after the suit was instituted, the Defendants filed a petition seeking rejection of the plaint under Order VII Rule 11, CPC. While the Trial Court dismissed the application on the ground that the plaint does disclose a cause of action, the High Court, by the impugned order, observed that the property in survey No. 76/1 (described in schedule A of the plaint) was sold way back in 1919 via a registered Sale Deed. The High Court reasoned that the Plaintiffs did not deny the sale, but only urged that there was a subsequent re-conveyancing of the property back to the joint family, without a corresponding mutation of revenue records. Impressed by the fact that the Plaintiffs neither produced any evidence to challenge the

Sale Deed from 1919, nor sought any declaratory relief against the Sale Deed, High Court proceeded to allow the application under Order VII Rule 11, CPC in part, and rejected the Plaint with respect to Schedule-A property. Shri Yogeshwaran submitted that the High Court committed an error in allowing the Revision and consequently, the application under Order VII Rule 11, CPC.

5. Shri S. Nandakumar, learned counsel appearing for the respondents, with the assistance of Ms. Deepika Nandakumar, Mr. Ashok Kumar Singh, Mr. Rajeev Gupta and Mr. Naresh Kumar, on the other hand, supported the reasoning and conclusion of the High Court.

6. Before considering the legality of the approach adopted by the High Court, it is necessary to consider Order VII Rule 11, CPC[2] and the precedents on the subject. The relevant principles have been succinctly explained in a recent decision of this Court in *Dahiben v. Arvindbhai Kalyanji Bhanusali*,[3] as follows:

> *"**23.2.** The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.*
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> ***23.3.** The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily*

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2 11. Rejection of plaint.—The plaint shall be rejected in the following cases—
(a) where it does not disclose a cause of action;
(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so;
(d) where the suit appears from the statement in the plaint to be barred by any law;
(e) where it is not filed in duplicate;
(f) where the plaintiff fails to comply with the provisions of Rule 9:
Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.

3 (2020) 7 SCC 366.

protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. *In Azhar Hussain v. Rajiv Gandhi [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p. 324, para 12)*

> *"12. … The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action."*

23.5. *The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.*

23.6. *Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] , read in conjunction with the documents relied upon, or whether the suit is barred by any law.*

...

23.9. *In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.*

23.10. *At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]*

23.11. *The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)*

> *"139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."*

23.12. *In Hardesh Ores (P) Ltd. v. Hede & Co. [Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman [D. Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941] .*

23.13. *If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.*

23.14. *The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003)*

1 SCC 557] . The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823].

23.15. *The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint"*

7. In simple terms, the true test is first to read the plaint meaningfully and as a whole, taking it to be true. Upon such reading, if the plaint discloses a cause of action, then the application under Order VII Rule 11 of the CPC must fail. To put it negatively, where it does not disclose a cause of action, the plaint shall be rejected.

8. Following this clear principle, we will now consider the averments made in the plaint. The relevant portions of the plaint are as follows:

"The plaintiffs submit that the said joint family of late Muniventkata Bhovi was in the habit of raising finance whenever it was needed on the strength of the said land in survey number 76/1 later renumbered as 76/2 by executing nominal sale deeds and used to clear the same and used to get necessary reconveying documents... the same habit continued even after the death of late Munivenkata Bhovi by his wives... the said landing survey number 76/2 always continued to be and is in possession of the joint family of the plaintiffs...

The plaintiffs submit that many times even after clearing the debts due to the said financiers, there was reconveyance deeds or release deeds in favour of the plaintiffs joint family in its favour since they had immense confidence in Karibasappa's family and there was no trouble regarding their joint possession of the said joint family properties...

The plaintiffs submit that the attitude of defendants 1 to 3 towards plaintiffs' welfare became disinterested and they started neglecting

them ... some of the plaintiffs tried to make the defendants 1 to 3 to take some steps ... the said defendants 1 to 3 advised them and other plaintiffs to have patience as lot of documents and revenue entries have to be updated before dividing the suit schedule properties and give separate possession to each sharers including plaintiffs ...

The plaintiffs submit that the said joint family has no debts and the suit schedule properties are available for partition ...

Plaintiffs 1 to 6 submit that instead of partitioning the said suit schedule properties among the plaintiffs and the defendants 1 to 3, the said defendants have started making efforts to alienate the same to others in the month of May 2005 ... they even made it clear that the heirs of Karibasappa and themselves will create all sorts of problems to the plaintiffs for daring to question them and they claimed that several documents have been created in respect of the suit schedule properties and revenue records and built up in the names of their own man and they will cause all sorts of obstructions to the plaintiffs in realising their shares and even create third party interests therein and induct others into the possession thereof..."

It is apparent from the above that, the Plaintiffs specifically pleaded that various sales were executed through 'nominal sale deeds', but were not acted upon. The plaint of the joint family property specifically addressed the issue of the revenue records and averred that although the RTC records stood in the name of the financiers, the joint family continued to be in undisrupted possession of the property.

9. If the statements in the plaint are taken to be true, the joint family properties may enure to the benefit of its members and they may well be available for partition. This is a matter of trial, the result of which would depend upon the evidence adduced by the Plaintiff. At this stage, we are not concerned with the correctness of the averments, except to state that the Plaintiffs have the carriage of the proceedings, and have to discharge the heavy burden of proving their case. In so far as the application under Order VII Rule 11 of CPC is concerned, this Court will proceed only that far, to examine whether the plaint discloses a cause of action, and no further.

10. The High Court committed an error by examining the merits of the matter. It pre-judged the truth, legality and validity of the sale deed under which the Defendants No. 4 to 14 claim title. This is not to say that the Plaintiffs have any less burden to prove their case or even that their case is probable. Simply put, the High Court could not have anticipated the truth of the averments by assuming that the alleged previous sale of the property is complete or that it has been acted upon. The approach adopted by the High Court is incorrect and contrary to the well-entrenched principles of considering an application under Order VII Rule 11, CPC. Under these circumstances, we set aside the judgment and the order passed by the High Court and dismiss the application under Order VII Rule 11, CPC, and restore the suit even with respect to properties mentioned under Schedule A of the Plaint.

11. There is yet another reason why the judgment of the High Court is not sustainable. In an application under Order VII Rule 11, CPC a *plaint cannot be rejected in part.* This principle is well established and has been continuously followed since the 1936 decision in *Maqsud Ahmad* v. *Mathra Datt & Co*[4]. This principle is also explained in a recent decision of this Court in *Sejal Glass Ltd.* v. *Navilan Merchants (P) Ltd*,[5] which was again followed in *Madhav Prasad Aggarwal* v. *Axis Bank Ltd.*[6] The relevant portion of *Madhav Prasad* (supra) is extracted hereinunder:

> ***"10.*** *We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise of power under Order 7 Rule 11(d) CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this*

4 AIR 1936 Lahore 1021
5 (2018) 11 SCC 780.
6 (2019) 7 SCC 158.

Court in Sejal Glass Ltd. [Sejal Glass Ltd. v. Navilan Merchants (P) Ltd., (2018) 11 SCC 780 : (2018) 5 SCC (Civ) 256] is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) CPC stating that the plaint disclosed no cause of action. The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the Director's Defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against Defendant 1 company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) CPC. The Court answered the said question in the negative by adverting to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) CPC will have no application at all, and the suit as a whole must then proceed to trial.

...

***12.** Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) CPC on account of non-compliance with mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses (a) to (f) of Rule 11 of Order 7 CPC. In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part..."*

(emphasis supplied)

12. In view of the above referred principle, we have no hesitation in holding that the High Court committed an error in rejecting the plaint in part with respect to Schedule-A property and permitting the Plaintiffs to prosecute the case only with respect to Schedule-B property. This approach while considering an application under Order VII Rule 11, CPC is impermissible. We, therefore, set aside the judgment and order of the High Court even on this ground.

13. For the reasons stated above, the Civil Appeal arising out of SLP (C) No. 8147 of 2016 is allowed and the impugned judgment and order of the High Court of Karnataka in Civil Revision Petition No. 158 of 2010 dated 09.11.2015, is set-aside.

14. In view of the fact that the present proceedings arise out of a suit instituted in 2005, we request the Trial Court to take up the trial and dispose of the suit expeditiously.

15. Parties will bear their own costs.

Headnotes prepared by: Divya Pandey *Result of the Case:* Appeal allowed.