

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

CFA No. 34/2018

Reserved on: 20.10.2022.

Pronounced on: 16.11.2022.

Hafiza Begum and Ors.

Through: Mr Syed Mohtasin, Advocate

...Petitioner(s)

Vs.

Shams Din Bhat and Ors.

Through: Mr Z. A. Qureshi, Sr. Advocate with
Ms Razia Amin, Advocate.

...Respondent(s)

CORAM:**HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE****JUDGEMENT**

1. The instant appeal is directed against order dated 05.04.2018 (for short 'the impugned order/judgement and decree) passed by the Principal District Judge, Srinagar, (for short 'the Trial Court') in case titled as "*Hafeeza Begum and Ors*" vs *Shamsu-Din Bhat and Ors.*".
2. The facts emerging from the memo of appeal reveal that the appellants herein filed a civil suit with following reliefs: -

"To pass a decree of declaration declaring plaintiffs as exclusive owner of the property and the sale deeds dated 15.03.2014 registered on 22.06.2014 and 2nd sale deed dated 24.03.2015 registered on 16.04.2015 as mentioned above be declared null and void and ineffective as defendant No. 3 has no right or title to alienate the suit property, hence sale deeds executed by defendant No. 3 in favour of defendant No. 1 & 2 defendant No. 1 be declared to be ineffective, illegal and liable for cancellation.

In alternative if the defendant No. 3 is held to have a right to sell the property, then a decree for right of prior purchase in respect of suit property on payment of the price proved to be paid in favour of plaintiffs against defendants with cost of suit.

The defendants be restrained from causing any interference in the suit property."

3. The respondents herein being the defendants before the Trial Court after entering appearance filed written statement to the civil Suit. During the pendency of the said Suit, the Trial Court on 15.09.2017 framed as many as 6 issues upon pleadings of the parties.
4. On 14.10.2017 the defendants/respondents herein filed an application under Order VII Rule 11 CPC seeking therein rejection of the plaint on the plea that the plaint does not disclose any cause of action to which objections came to be filed by the plaintiffs appellants herein.
5. The Trial Court upon considering the said application filed under Order VII Rule 11 CPC by the defendants respondents herein rejected the plaint of the plaintiffs/appellants herein in terms of impugned order/judgement and decree while allowing the application thereby dismissing the Suit of the plaintiffs/appellants herein.
6. Following grounds of challenge have been urged in the memo of appeal: -

“i) That the impugned judgement and Decree passed by the Ld. Pr. Distt. Judge, Srinagar is legally bad and suffers from serious legal infirmities therefore liable to be quashed and set aside. It is a settled position of law that Plaint cannot be rejected on allegations made by respondent in his written statement or in his application for rejection of plaint. Court has to read entire plaint as whole to find whether it discloses cause of action or not if plaint discloses cause of action, then it cannot be rejected under O.7, R.11-A CPC whether plaint discloses cause of action is question of fact as long as plaint discloses cause of action, mere fact that plaintiff may not succeed in the suit cannot be ground of rejection of plaint. In this connection attention of the Hon’ble Court is drawn to paras 11 and 12 of the Apex court judgement titled Kuldeep Singh Pathania Vs. Bikram Singh Jaryal, paras 11 and 12 read as under: -

Para11: In Mayar (H.K.) V. Vessel M. V. Fortune Express, this court has dealt with a similar issue. To the extent relevant, Para 12 reads as follows:

“From the foresaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for

rejection of the plaint. The court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action,, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, willfull default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the judge the plaintiff may not succeed cannot be a ground for rejection of the plaint.”

Para 12: It is not necessary to load this judgement with other judgments dealing with this first principle of Order 7 Rule 11(a) of the Code. As held by this Court in Virender Nath Gautam V. Satpal Singh at para 52:

“The High Court, in our considered opinion, stepped into prohibited area of considering correctness of allegations and evidence in support of averments by entering into the merits of the case which would be permissible only at the stage of trial of the election petition and not at the stage of consideration whether the election petition was maintainable and dismissed the petition. The said action, therefore, cannot be upheld and the order deserves to be set aside.”

The instant appeal of the appellants is squarely covered by the aforementioned judgement of the Hon’ble Supreme Court.

ii) That on the basis of the plaint and written Statement the trial court was fully satisfied that the plaint disclosed the cause of action against the respondents/defendants and therefore on 15.09.2017 proceeded with framing of the issues and accordingly directed the appellants/respondents to submit the list of witnesses and lead the evidence. The appellants in terms of order dated 15.09.2017 submitted the list of witnesses, whereafter, the respondents/defendants moved an application under O.7, R.11 CPC which came to be

allowed by the Ld. Court and passed the impugned judgement dated 05.04.2018 in CMP No.452-A/2017 c/w COS No. 57/2015 which is not sustainable in the eyes of law and has therefore to be quashed and set aside.

iii) that in the instant suit the Ld. Court earlier had satisfied itself that the provision of O.7, R.11 was not attracted and accordingly proceeded to frame the issues in the suit, in that view of the matter, the Ld. Principal Dist. Judge, Srinagar, committed a grave error of law by ignoring the issues that has been framed rendering the impugned judgement and decree illegal, liable to be quashed and set aside.

iv) that the judgment and decree impugned in this appeal is suffering from serious legal infirmities therefore unsustainable in law, hence liable to be quashed and set aside.

Heard learned counsel for the parties and perused the record.

7. Before testing the correctness or otherwise of the impugned order/judgement and decree, it would be advantageous and appropriate to refer hereunder the Order VII Rule 11 CPC, as also position of law propounded by the Apex Court in various judgements on the subject:

“Order 7 Rule 11. Rejection of Plaint-The plaint shall be rejected in the following cases:

- a) where it does not disclose a cause of action;
- b) xxx
- c) xxx
- d) xxx
- e)xxx

The Apex Court in *“Saleem Bhai Vs. State of Maharashtra, reported in AIR 2003 (1) SCC 557”*, has observed as under: -

“A perusal of Order 7 Rule 11 of the CPC, makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The Trial Court can exercise the power under Order 7, Rule 11 of the CPC at any stage of the suit before registering the

plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 of the CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.”

In **“Raptakos Brett and Company Limited Vs. Ganesh Property, reported in 1998 (7) SCC 184”**, Apex Court has held as follows: -

“That while considering the application for rejection of a plaint under Order VII Rule 11 CPC, the distinction that the averments made in the plaint does not make out a cause of action and that the plaintiff has no cause of action to file a suit has to be borne in mind as it is only where the averments made in the plaint does not disclose a cause of action, the plaint is liable to be rejected under Order VII Rule 11 CPC.”

8. It is also well settled that the plaint can be rejected only when the averments made in the plaint does not disclose any cause of action for the reliefs sought for in the plaint and a plaint cannot be rejected in part.

The words “cause of action” for the purposes of Order VII Rule 11 CPC has been considered by the Apex court in case titled as **“A.B.C Laminart Private Limited Vs. A. P. Agencies, Salem reported in 1989 (2) SCC 163”** as follows: -

“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 fight 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 fight 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.”

Here a reference to the judgement of the Apex Court passed in case titled as **“Jageshwari Devi and Ors. Vs. Shatrughan Ram reported in 2007 (15) SCC 52”** also becomes imperative here under:-

“There is difference between non-disclosure of cause of action and defective cause of action, while the former comes within the scope of Order 7 Rule 11, the later is to be decided during the trial of the suit.”

9. Reverting back to the case in hand, the perusal of the application filed by the defendants/respondents herein for rejection of the plaint would reveal that the defendants/respondents herein in essence had pleaded therein in the application that the averments made in the plaint are contradictory to each other as also reliefs sought by the plaintiffs in the plaint, therefore suggesting that the plaintiffs have no cause of action against the defendants/respondents herein.
10. Perusal of the record tends to show that the Trial court while considering the said application and passing the impugned judgement/order recorded the following observations: -

“Here in this case the raising of conflicting stands with regard to suit property, on one hand as owners and on the other hand as entitled to exercise the right of prior purchase and both these

rights cannot co exist being contrary. The cause of action therefore, has been defectively pleaded, as such, the plaint as a whole deserves to be rejected.”

11. As has been noticed in the preceding paras, the settled principles law laid down by the Apex court for rejection of plaint and also as envisaged under Order VII Rule 11 clause (a) has been that a plaint shall be rejected where it does not disclose a cause of action. No ground like the one **defectively pleaded cause of action** has been either provided in order VII Rule 11 CPC or else in any of the pronouncements of the Apex court (supra) for rejection of the plaint.
12. The Trial Court admittedly has misdirected itself while considering the provisions of Order VII Rule 11 clause (a), as also the principles of law laid down by the Apex Court in long line of decisions.
13. The matter seemingly has not received appropriate consideration by the Trial Court, as such, warrants remanding back of the matter to the Trial Court for re-consideration afresh in accordance with law. Accordingly, the instant appeal is allowed and impugned order/judgement and decree dated 05.04.2018 passed by the Principal District Judge, Srinagar, is set-aside. The matter is remanded back to the Trial Court with a direction to re-visit and reconsider the application filed by the defendants/respondents herein under Order VII Rule 11 CPC and pass appropriate orders in accordance with law after providing an opportunity of being heard to the counsel for the parties.
14. Disposed of.
15. It is made clear that nothing hereinabove shall be constrained to be expression of any opinion about the merits of the case in respect of the application filed by the defendants/respondents herein before the Trial Court under Order VII Rule 11 CPC.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR

16.11.2022

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Whether approved for reporting Yes