



2024:JKLHC-JMU:191

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Case No.:- RFA No. 20/2021
CM Nos. 7061/2021, 5172/2023, 6492/2021
3992/2023 & 7442/2021.
c/w
CCP(S) No. 239/2021
CCP(S) No. 207/2022
CCP(S) No. 121/2023.

Sunil Singh Age 47 years
S/o Jagjit Singh
R/o F-34 Street No. 6, Talab Tillo, Jammu.

.....Appellant(s)

Through: Mr. Arvind Bandral, Advocate.

Vs

1. Krishan Lal Gupta
S/o Chand Mal
R/o Near Marble Showroom, Street No. 6, Interrogation Lane,
Talab Tillo, Jammu.
2. Om Parkash Gupta
S/o Krishan Lal Gupta
R/o Near Marble Showroom, Street No. 6, Interrogation Lane,
Talab Tillo, Jammu.
3. Sureshta Devi
W/o Late Sh. Ranjit Singh
R/o village Thakurpura, Hiranagar District Kathua.
4. Shashi Thakur
W/o R.P. Thakur
R/o Near Heritage School Chowk, Chowadhi, Jammu.
5. Sarla Sayal
D/o Late Sh. Surjan Dass Sayal
W/o Late Sh. Jogeshwar Singh
R/o Suraj Nagar, Talab Tillo, Jammu
A/p Dharamshala, H.P
6. Jagjit Singh Bandral
S/o Late Sh. Kesri Singh Bandral
R/o F-34 Street No. 6, Talab Tillo, Jammu.

..... Respondent(s)

Through: Mr. Kuldeep Singh Parihar, Advocate.



Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT

1. The appellant herein, as a plaintiff, came forward with a suit for declaration and consequential reliefs with respect to the suit property comprising of a house situated at Talab Tillo, Jammu measuring:

North: 45'

South: 40'

East: 125'

West: 125'

falling under khasra Nos. 119, 120 and 121 and bounded as under:

North: House of Karan Singh Slathia.

East: Lane No. 6

West: House of Kulbir Singh Bandral

South: House of Jagjit Singh Bandral

2. In the suit, the appellant asked for a decree to the following effect:

“Civil Original Suit declaring the Gift Deed dated 28-Feb 2006 made and executed between def. no. 2, Om Prakash Gupta (through attorney holder Sureshta Devi, Def No. 3) and def. No. 4 (Shashi Thakur) as null and void having no relevancy in the eyes of law with regard to under constructed House situated at Talab Tillo, Jammu measuring

**Noth 45'
South 40'**



East 125'
West 125'

Falling under khasra No. 119, 120 and 121. Whereas the exact location of suit property is as below:

East-Lane No. 6
West- House of Kulbir Singh Bandral
North-House of Karan Singh Slathia
South-House of Jagjit Singh Bandral

Further declaring the Power of Attorney executed by def no. 2 (Om Prakash Gupta) to def no. 3 (Sureshta Devi) as null and void. Copy of said POA has not been shown by the fraudster till date despite the long legal battle fought by the father of the plaintiff.

Civil Original Suit for Declaration thereby declaring the Gift deed dated 27.05.1994 by and between Def. no. 1 (Krishan Lal Gupta) and def no. 2 (Om Prakash Gupta) registered with the court of Ld. Sub Registrar (Munsiff) Court Jammu as null and void as it contains the elements of fraud and cheating.

Further declaring the Power of Attorney of suit property executed by performa def no. 1 to defendant no. 1 on 24.05.1994 as null and void having no power to execute the same.

Further declare Gift Deed executed by deceased Uncle Yogeshwar Singh in favour of Sarla Sayal (Performa Defendant No. 1) on 23.1.1993 as null and void and inoperative as the said Jogeshwar Singh had no right to executed the Gift Deed in anyone's favour.

With a consequential relief to quash any other hidden document of the defendants subsequently, if registered on the basis of lies and intrigues.

With consequential relief of Mandatory Injunction directing the defendant No. 4 to restore the possession in favour of plaintiff.

Further relief of transferring all the rights and title of the suit property in the name of plaintiff who is actually entitled for the same as wished by the deceased Jogeshwar Singh Bandral and his family (performa def no. 1) along with the true owner Jagjit Singh Bandral (performa Def. No. 2)

Or

Further with a consequential relief that if the defendant No. 4, who is desperately trying to alienate the suit property with her lies and intrigues if succeeded to get register any document then it may kindly be taken as a part and parcel of this suit

Or



Any other relief which this Hon'ble Court deems fit may kindly be passed in favour of the plaintiff and against defendants.

3. In the said suit, the appellant named four persons as contesting defendants whereas two persons as proforma defendants.
4. Proforma defendant No. 2 is the father of the appellant whereas proforma defendant No. 1 is the widow of late Sh. Yogeshwar Singh, the brother of the proforma defendant No. 2.
5. The suit filed by the appellant came to be rejected, invoking Order VII Rule 11 of the Code of Civil Procedure, 1908, at its very inception stage by the trial court of learned 1st Additional District Judge, Jammu by virtue of an order dated 02.08.2021 on a singular basis that the appellant/plaintiff has nowhere pleaded and shown as to how the suit property is legally related to him so as to earn a right to sue for seeking declaration and reliefs therewith with respect to the suit property in the context of the documents being assailed thereby.
6. This Court has also gone through the entire length and breadth of the plaint labouring to figure out as to how the appellant/plaintiff is to be reckoned to be in a legal status quo the suit property so as to earn right to sue with respect to the documents being assailed in the suit and thereby seek the



consequential relief of restoration of possession of the suit property from the defendant No. 4.

7. Entire reading of the plaint inside out nowhere comes up with a single line whisper as to how the appellant/plaintiff is to be reckoned as owner/claimant of the suit property. In fact, the appellant/plaintiff is lost in his own jugglery of averments by purportedly relating the suit property to his father-proforma defendant No. 2 and also to his deceased uncle-Yogeshwar Singh, the husband of the proforma defendant No. 1 but not to himself and still suing for it.
8. In **Raj Narain Sarin (Dead) through LRs and ors Vs. Laxmi Devi and ors, (2002) 10 SCC 501**, the Hon'ble Supreme Court of India has dwelled upon Order VII Rule 11 of the Code of Civil Procedure, 1908 application. The Hon'ble Supreme Court of India has put a caveat for the civil court/s to bear in mind a well settled principle of law that the court should be rather hesitant to exercise jurisdiction under Order VII Rule 11 of the Code of Civil Procedure, 1908 unless the factual score warrants such an exercise and the matter in issue falls within the four corners of the requirement of the statute and for this, necessary averments in the plaint ought to be considered.
9. Thus, in a very clear words and meaning, the Hon'ble Supreme Court of India is emphasizing the role of fact-stating made in a plaint to be the one by reference to which rejection or non-rejection of a plaint is supposed to take place under spell of Order VII Rule 11 of the Code of Civil Procedure, 1908. If a



plaint has missing or deficiency of fact/s on the basis of which a given cause of action intended to be agitated can be said or assumed to be constituted, then a plaint is self-warranting its rejection sooner than later, be it on court's own indulgence or on asking of a defendant. If the facts put up in a factual statement in the plaint are presenting or introducing a cause of action, then a civil court has no discretion reserved to it to reject such a plaint by borrowing outside reference, howsoever persuasive it may be, from the defendant's end to discredit a plaint and the factual averments made in written statement.

10. Filing of a civil suit is a matter of right for any person as held by the Hon'ble Supreme Court of India in **Vishnu Dutt Sharma Vs. Daya Sapra** reported in **(2009) 13 SCC 729**. In para 20 of the said judgment, the Hon'ble Supreme Court of India has observed that any person may, as of right, have access to the courts of justice.
11. Section 9 of the Code of Civil Procedure, 1908 enables a person to file a suit of civil nature excepting those whose cognizance by civil court is expressly or by necessary implication barred.
12. Rejection of a plaint in terms of Order VII Rule 11 of the Code of Civil Procedure, 1908 is a matter of very attentive application of mind rather than routine following of motion on the part of a civil court bearing in mind and memory the fact that essence of institution of a civil suit is seeking of a decree by a plaintiff through the medium of which he/she/it is



meaning to have a formal expression of an adjudication from a court aiming for conclusive determination of the rights of the parties to suit with regard to all or any of the matters in controversy in the suit which conclusive determination can take place only when a suit is to get its adjudication on the issues of fact and law framed in a civil suit and not before that.

13. Rejection of a plaint, however, is a sort of digression of that nature of adjudication of a civil suit and as such, such a digression is not to be served to a civil suit unless and until a plaint is self-inviting the same for its rejection. This is what is essence of Order VII Rule 11 of the Code of Civil Procedure, 1908 is.
14. In the case of **Kuldeep Singh Pathania Vs. Bikram Singh Jaryal** reported in **(2017) 5 SCC 345**, the Hon'ble Supreme Court of India has read the invitation and application of Order VII Rule 11 of the Code of Civil Procedure, 1908 with respect to civil suit which is having institutional defects for which a civil court is permitted only to see whether the plaint, or rather the pleadings of the plaintiff, constitute a cause of action. Pleadings in the sense where, even after the stage of written statement, if there is a replication filed, in a given situation the same can also be looked into to see whether there is any admission on the part of the plaintiff. In other words, under Order VII Rule 11 of the Code of Civil Procedure, the court has to take a decision looking at the pleadings of the plaintiff only



to the total exclusion of the rebuttal made by the defendant or any other materials produced by the defendant.

15. In the context of a cause of action in a plaint not being disclosed thereby exposing/rendering a plaint liable for rejection under Order VII Rule 11 of the Code of Civil Procedure, 1908, the understanding of expression of 'cause of action' needs to be born in mind conceptually by civil court with an utmost clarity without admitting any slightest of confusion thereto lest the provision is left being applied or not applied in misconceived manner.
16. In the case **of Dahiben Vs. Arvinbhai Kalyanji Bhanusali (Gajra) Dead through legal representatives and ors, (2020) 7 SCC 366**, the Hon'ble Supreme Court of India has dealt with Order VII Rule 11 of the Code of Civil Procedure, 1908 in a detailed manner recognizing therein that remedy under Order VII Rule 11 of the Code of Civil Procedure, 1908 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 under Order VII Rule 11 of the Code of Civil Procedure, 1908.
17. The essence of application of under Order VII Rule 11 of the Code of Civil Procedure, 1908 to terminate a civil action or to put an end to a litigation is an essential duty of a civil court so



that further judicial time is not invested wastefully. By reference to the case of **Azhar Hussain vs. Rajiv Gandhi reported in 1986 (Supp) Supreme Court Cases 315**, the Hon'ble Supreme Court has held that whole process of conferment of power under Order VII Rule 11 of the Code of Civil Procedure, 1908 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.

18. However, power under Order VII Rule 11 of the Code of Civil Procedure, 1908 which is of abortive nature vis-à-vis a civil suit is reckoned to be a drastic power for which the conditions envisaged in under Order VII Rule 11 of the Code of Civil Procedure, 1908 are required to be strictly adhered to in the context of non-disclosure of a cause of action inviting application of Order VII Rule 11 of the Code of Civil Procedure. It is held by the Hon'ble Supreme Court in the judgment (supra) that a duty is cast on a civil court to determine whether a plaint discloses a cause of action by scrutinizing the averments in the plaint read in conjunction with the documents relied upon or whether the suit is barred by any law.
19. Right to sue is an essential ingredient of cause of action. If there is no right to sue, there cannot be a disclosure of a cause of action. This proposition of law is as simple as it can be.
20. Bearing in mind the position of law, factual as well as legal, as set out hereinbefore, this Court is in full agreement with the



order dated 02.08.2021 passed by the learned 1st Additional District Judge, Jammu whereby the suit has been rejected by application of Order VII Rule 11 of the Code of Civil Procedure, 1908, as such, the present appeal is **dismissed** along with all connected matters.

21. Disposed of accordingly.
22. The detailed judgment is following the order dated 04.07.2024 vide which the appeal was ordered to be dismissed as hereby being done.

JAMMU
08.11.2025
Naresh/Secy.

(RAHUL BHARTI)
JUDGE

Whether the order is speaking? Yes
Whether the order is reportable? Yes

सत्यमेव जयते