

(2000) 05 AHC CK 0061
In the Allahabad High Court
Case No : First Appeal No. 710 of 1992

Kanhaiya Lal (Decd.) through LRs	Vs	APPELLANT
Sri Raj Narain Sarin (Decd.) through LRs and others		RESPONDENT

Date of Decision : 15-05-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2000) 3 AWC 2206 : (2000) AWC 2206

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : G.N. Verma, P.K. Jain, A.N. Verma and H.M.B. Sinha, for the Appellant; Pankaj Mishra, Samir Sharma, S.K. Singh and B.D. Mandhyan, for the Respondent

Judgement

D.K. Seth, J.—This appeal arises out of an order of rejection of a plaint under Order VII, Rule 11, passed by the learned Civil Judge. Agra in Suit No. 499 of 1990, on 23rd October, 1992. Mr. G. N. Verma assisted by Mr. P. K. Jain, learned counsel for the appellant contended that the learned court below while deciding the question under Order VII. Rule 11, had taken aid of defence that has been brought in by the defendants and had proceeded on the basis of certain findings as to the veracity of the statement made in the plaint and in fact, has pre-empted the finding with regard to the various Issues that might have cropped up on the basis of the plaint. According to him, in order to determine a question under Order VII. Rule 11, it is only the pleadings made out in the plaint, which is to be looked into. The Court cannot look into anything beyond the plaint, it cannot consider either the written statement or the defence or other material that might have been produced by the defendants. Therefore, the order appealed against cannot be sustained.

2. Mr. B. D. Mandhyan, learned counsel for the defendants on the other hand contends that from the plaint Itself, it appears that the suit is absolutely frivolous and vexatious. He points out that it is a collusive suit. One Sri Aziz had set up

the plaintiff after the said Aziz had been unsuccessful in his attempt up to the Apex Court. He also contends that the plaintiff was never in possession and the defendants were in possession and had also referred to various documents which were produced by way of defence as well as had based his submission on arguments with regard to the defence case and probability of the plaintiff's case as well, as various materials to show that the plaintiffs case cannot be sustained and the plaintiff's statement made in the plaint are Incorrect and untrue. He led me through various documents to show that the plaintiff did not have any title and they were out of possession and that the statement made in the plaint with regard to the possession is wholly baseless. In fact, he had addressed the Court on the question of merit of the case having regard to the defence in order to prove that the pleadings made out in the plaint are baseless and that those are incorrect. He had also relied on certain decisions in support of his contention to which reference would be made at appropriate stage.

3. I have heard both the counsel at length.

4. Order VII, Rule 11, provides that a plaint shall be rejected where it does not disclose a cause of action. The express "it" refers to the plaint. Thus. Order VII. Rule 11, confines the consideration of rejection of a plaint only to the pleadings made out in the plaint in order to find out as to whether it discloses a cause of action or not- This provision is exercised at the threshold in order to prevent frivolous litigation. If the plaint does not disclose any cause of action in that event, there is no right for the plaintiff to pursue a suit since he had no cause of action. This question is to be looked into within the four comers of the pleadings made out in the plaint alone. No extrinsic aid can be available to the Court for the purpose of determining a question under Order VII, Rule 11, or from any source whatsoever, it can neither look into the written statement nor it can look into the materials that might be brought by the defendants nor it can look into the defence that might be taken by the defendants. Mr, Mandhyan contended that he had only brought about the deed itself which has been referred to in the plaint, to have been executed in the year 1941, by the predecessor-in-interest of the plaintiffs and sought to point out from the deed itself that an interpretation of the deed will show that no cause of action has been pleaded in the plaint, which could be available to the plaintiff. But I am afraid that such a proposition can be accepted, if any external aid is to be taken from the deed itself, then again it will be outside the scope of the plaint unless the plaint is dependent only on the document itself. On the other hand, in the plaint, as in the present case plaintiff has neither questioned the document nor had depended on it. It had based its claim on the basis of Its possession and that the alleged document was not effective in respect of the portion of the possession of the plaintiff. Therefore, the aid of the said deed cannot help us to find out as to whether the plaint discloses a cause of action. The argument made by Mr. Mandhyan attempted to disprove the allegations made in the plaint to disprove the cause of action that has been disclosed in the plaint. Thus, it again travels beyond the pleadings made in the plaint. But the said disproof of the document could be accepted provided there

was no statement that the plaintiff was in possession. In the absence of statement of possession in the plaint, the deed would have been of assistance to Mr, Mandhyan in order to substantiate his contention. But as soon there was an allegation of possession, then the deed becomes a defence and as such, it cannot be looked into for the purpose of determining the Issue under Order VII, Rule 11.

5. In the present case, in the plaint the following statements have been made :

5. That at the time of settlement proceedings in the year 1922-1923, the total area of 10 Bigha 6 Biswa land of Khosra No. 673 was recorded as abadi plot No. 460, as the same has since long been used for non-agricultural purposes as constructions in the shape of houses, bungalow and kothis were existing since long and U. P. Tenancy Laws ceased to apply to it and Munni Lal adopted son of Sri Ram Sahai continued to hold an area of 3 Bigha 13 Biswas as tenant while the rest of 6 Bigha 13 Biswas area thereof as sub-tenant as before wherein, as sub-tenant he had no transferable rights.

6. That as stated above Sri Ram Sanai the predecessor in Interest of plaintiff was the occupancy tenant in respect of 3 Bigha 13 Biswas and owner of the Bungalow constructed built and existing over this area while Smt. Siddo aforesaid was occupancy tenant of rest of 6 Bigha 13 Biswas and Shri Ram Sahai was owner of house Bungalow built and existing over this area of which Sri Ram Sahai was the sub-tenant as Zalil and the nature status of the two holdings were quite separate and distinct though they constituted within one undivided Minjumla plot No. 673 old and 400 new.

7. That after the death of Sri Ram Sahai occupancy tenancy of 3 Bigha 13 Biswas and sub-tenancy of rest of 6 Bigha 13 Biswas in plot No. 673 was Inherited by Smt. Kaushalya his widow and after her death by Munni Lal adopted son of Sri Ram Sahai and on his death by plaintiff.

8. That Sri Munni Lal aforesaid in or about the year 1941, transferred under a sale deed to defendant No. 1 his tenancy (occupancy holding rights) over 3 Bigha 13 Biswas area of plot No. 673 along with bungalow existing thereon. The above sale deed had nothing to do with the rest of the area, i.e. 6 Bigha 13 Bis mas and Bungalow and building thereon which continued to be owned and possessed by the Plaintiff and prior to him by Sri Munni Lal his predecessor-in-Interest and the defendant No. 1 or any other defendants have or had no right title or interest thereon nor have they ever been in possession.

9. That as stated above that 6 Bigha 13 Biswas area of plot No. 673 old and 460 new was occupancy tenancy land of Smt. Siddo wife of Sri Khumani of which Sri Ram Sahai, was the sub tenant and in which Sri Munni Lal had no transferable right is unaffected by the sale by him aforesaid and which during the course of time devolved and Inherited by plaintiff and prior to him his predecessors in title and the contrary recital in the aforesaid sale deed if any is illegal and Invalid and not binding on the Plaintiff.

10. That now it has transpired to the Plaintiff that the defendant No. 3 is a building society under the shrewd leadership of Sri V. C. Garg a very Influential person in collusion league with other defendants have hatched up a conspiracy to grab the land and buildings of the plaintiff and to fulfil their designs are manipulating some documents adversely effecting the rights and ownership of the Plaintiff and further they are contemplating to dispossess the Plaintiff from the property in suit.

11. That the defendant No. 4 alleges to be the transferee from defendant Nos. 1 to 3 under some collusive and fictitious transfer deed and therefore, it has also been impleaded as defendant.

12. That the Plaintiff is the owner in possession of 6 Bigha 13 Biswas land along with the building bungalows built and standing the cover and now it is not possible for the plaintiff to remain joint with defendant No. 1 and therefore, the plaintiff requested him to divide and partition the land by metes and bounds but he refused, and hence the suit.

13. That the cause of action for the suit arose at Agra amongst other dates in or about the last week of March, 1990, when the defendant Nos. 1 to 3. refused to partition the land in suit within the Jurisdiction of this Hon"ble Court.

Prayer--(A) :

"that a decree for partition by metes and bounds of the property detailed the foot of the plaint be passed in favour of the plaintiff against the defendants declaring the Plaintiff as sharer of 6 Bigha 13 Biswas or of 10 Bigha 13 Biswas and exclusive owner of building existing over 6 Bigha 13 Biswas and he may be put in actual and separate possession over his portion subject to adjustment of equities."

6. Having regard to the pleadings as referred to above, it is abundantly clear that the plaint discloses a cause of action that despite the transfer made by the predecessor-in-interest of the plaintiffs, the plaintiffs were in possession and owner of the property in respect of 6 Bigha 13 Biswas containing Bungalow and building and that the predecessor-in-interest of the plaintiff had no right to transfer the said portion which was under sub-tenancy. Mr. Mandhyan contended that there is no scope of sub-tenancy, it is only the question of possession. Even then it becomes a question of tenancy which has to be gone into for the purpose of determining the Issue that might be framed. Now the said pleadings definitely discloses a cause of action in respect of the relief that has been sought for in Prayer-A. Thus, the plaint could not have been rejected under Order VII, Rule 11.

7. I had scanned the reasons given in the order appealed against to the extent that Sri Ram Sahal, who was in possession of the entire land, much before 1285F, constructed a Bungalow over 6 Bigha 13 Biswas land. This allegation of the plaintiff was held to be wrong that he was only a sub-tenant and had no transferable right. Thus, the learned court below had not only looked into the

pleadings but had also come to a finding that this statement was wrong, it is not possible for the Court to arrive at a finding in respect of a statement made in the plaint without looking into the evidence. The Court has also gone to the extent of the title of Sri Ram Sahal and had held that he was not a sub-tenant but he was a tenant which is also a question of finding of fact or a question of belief or disbelief of the statement made in the plaint, which cannot be gone into unless at the stage of trial or even at the time of examination under Order X of the CPC had also dealt with certain factors with regard to execution of usufructuary mortgage in favour of third person prior to 1940 and the question of attachment and various other matters which were not available from the pleadings made in the plaint. He also found that there was knowledge of the Zamindars as well as that of the plaintiff and his mother about the facts which were not pleaded in the plaint but had been adverted to by the Court below and had also come to a finding that Sri Munnalal has no transferable right and has perfected his title by adverse possession of the property and became owner of the entire property. He had also referred to the existence of certain firm of defendant No. 1, and on dissolution thereof in the year 1971 some situation had arisen which is also not a matter that had found place within the pleadings made in the plaint. He also referred to a sale deed in favour of the defendant No. 4, for a consideration of Rs. 50 lakhs and had also come to finding that the plaintiff was out of possession and had no Joint interest and therefore, he is not entitled to maintain the suit. He has also come to a finding that the names of one Sri Thakur Das and Ram Sahal were recorded on the records with regard to the possession and that the plaintiff did not have possession and by virtue of the deed the defendants being in possession for more than 12 years, have acquired the title by prescription and had disbelieved the allegations of sub-tenancy as has been contained in the plaint. He had also come to a finding that right of Smt. Siddo had extinguished and Munni Lal and Ram Sahai became the owner of the land and therefore. Munni Lal had a transferable right and that Munni Lal had executed the deed in favour of the defendant No. 1 on behalf of the sons as defendant Nos. 2 and 3 and that the defendant No. 4 had acquired title in respect of the property by his subsequent purchase and that the allegations of the plaintiff were not true that Munni Lal had no transferable right. Therefore, the learned court was of the view that the plaintiff who is the son of Munni Lal has no title to the land and as such, he has no cause of action against the defendants and that the suit having not been filed within three years from the date of the execution of the sale deed, the suit is also time-barred.

8. The learned court was oblivious of the fact that on the strength of possession, the plaintiff has asked for partition on the pleadings made out in the plaint. He has not sought for any relief with regard to the document. Therefore, the question of limitation does not arise at this stage which can lead the Court to arrive at a conclusion that on the face of the pleadings made out in the plaint, the suit is barred by limitation if the possession is maintained and if Joint ownership is claimed in that event, it cannot be said that there could not be any

limitation with regard to a suit for partition. However, these are all questions which are dependent on the determination by the Court on the basis of the materials that might come before it either at the stage under Order X. of the CPC or at a subsequent stage as the case may be.

9. The plaint could not be thrown out at this stage on the basis of the pleadings that has been made out in the plaint as discussed above. Though it was open to the Court to resort to Order X. to ascertain the position whereunder the Court is entitled to look into both the cases made out by the plaintiff as well as that by the defendants and pass appropriate order if necessary. Frivolous or vexatious suit can be thrown out if the Court is active and resorts to Order X. for such purpose, if the plaint discloses a cause of action, the same cannot be rejected under Order VII, Rule 11, having regard to the case made out by the defendants either in the written statement or by bringing any such materials to negative the claim of the plaintiff.

10. Mr. Verma had relied on a decision in the case of Purnmasi Yadav v. Narbedeshwar Tripathi and others. AIR 1998 All 260, which had taken the same view which I have taken hereinbefore.

11. On the other hand. Mr Mandhyan had relied on the decision in the case of T. Arivandandam Vs. T.V. Satyapal and Another, . Relying on the paragraph 5 thereof, he contends that a technical reading of the plaint is not the mode and method to determine a question under Order VII, Rule 11, it is a meaningful reading of the plaint, which is necessary for the purpose of determining a question under Order VII. Rule II.

12. There is no doubt about the proposition laid down therein. The question has to be searched within the scope and ambit of the plaint itself and the pleadings made therein, it cannot look beyond the pleading. But the pleading has to be understood in its proper perspective as a whole. It cannot be read selectively and definitely a meaningful reading would be necessary to find out as to whether the plaint discloses a cause of action or not.

13. In the present case meaningful reading means that by reason of the deed executed by Munni Lal purporting to transfer the whole land was Ineffective in respect of the disputed land, in respect whereof it is alleged that Munni Lal was a subtenant and that in respect whereof. the plaintiff remained in possession as owner thereof. On the face of the allegation that the document was executed when the plaintiff was minor and that as karta and guardian of the minor, the document was executed by Munni Lal himself on behalf of the plaintiff. Thus, a meaningful reading would mean the plaint discloses a cause of action.

14. He had also contended on the basis of the said decision that the deed was executed in 1940 and the suit is Instituted in 1990. After 50 years it is wholly barred by limitation. That question has also been answered in the discussion hereinbefore. When the plaintiff claims that he continues to be in possession of the property, the question of limitation in respect of a suit for partition when no

declaration in respect of the deed has been asked for, cannot prima facie be said to be barred by limitation. This question is open to be decided by the Court at appropriate stage having regard to the defence that might be made out or that might be brought before the Court. But the scope and ambit of Order VII. Rule 11, does not permit the Court to go into such details except to the extent of deciphering the cause of action on the basis of the pleadings made out in the plaint alone and not beyond.

15. The decision relied on by Mr. Madhayan in the case of Khilari and others v. 3rd Additional District Judge. Banda and others 1983 ALJ 369, relates to the question of limitation. The said case was related to a cancellation of a sale deed, which was asked for long after three years of the execution of the deed and as such, on the face it was time barred. Here in this case, no prayer for cancellation of the deed has been asked for. As discussed above. It was a suit for partition on the strength of possession and ownership and as such that decision cannot help us.

16. The decision in the case of Katikara Chintamani Dora and Others Vs. Guntreddi Annamaniaidu and Others, , has been relied on by Mr. Mandhyan. He relied on the ratio decided in paragraph 55 of the said decision. In the said case, the Apex Court had held that in construing a pleading in this country, the Court should not look merely to its form, or pick out from it Isolated words or sentences : it must read the petition as a whole, gather the real Intention of the party and reach on the substance of the matter. This principle also is a settled principle and cannot be questioned. In order to ascertain the pleading, one has to read the same as a whole and to gather the Intention of the party. In order to arrive at a conclusion as to whether the plaint discloses a cause of action it is to be found out from the plaint through a meaningful reading thereof. This question can be answered by the observations, which have already made in respect of the disclosure of cause of action hereinbefore. Thus, this decision does not help us in the facts and circumstances of the present case.

17. The reliance on various documents with regard to the title and possession by Mr. Mandhyan which are annexed as annexures to his objection which are available on page Nos. 50 to 54, are also again documents which cannot be looked into in order to find out the cause of action from the pleadings. These are external aids which cannot be resorted to in order to decide a question under Order VII, Rule 11. This question can very well be gone into under Order X. of the CPC and it is open to the defendants as well as the learned trial court to decide this question in exercise of its jurisdiction under Order X. of the Code of Civil Procedure.

18. The appeal therefore, succeeds. The order dated 23rd October. 1992, passed by the learned Civil Judge. Agra in O.S. No. 499, of 1990, rejecting the plaint being a decree is hereby set aside.

19. The learned court below is directed to decide the question under Order X of

the CPC if the defendants make a prayer to that extent in accordance with law as early as possible preferably within a period of three months from the date of making such application, in case the party goes to trial in that event, the suit may be decided as early as possible preferably within a period of six months from the date of settlement of issues. Mr. Verma, however, submits that his client will not seek unnecessary adjournment, in case the defendants seek adjournment, the same shall be excluded for the purpose of calculating six months. However, there will be no order as to costs.