

(2017) 08 RAJ CK 0004
In the Rajasthan High Court
Case No : 202 of 2010

Parash Ram S/o Shri Nathu Lal Ji Joshi	APPELLANT
Vs	
Ram Singh S/o Shri Bhanwar Singh Ji Padiyar	RESPONDENT

Date of Decision : 01-08-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 7 Rule 11](#), [Section 151](#), [Section 96](#), [Order 7 Rule 11\(d\)](#) -
Public Trust Act, 1950, Sect

Citation : (2017) 08 RAJ CK 0004

Hon'ble Judges : Virendra Kumar Mathur

Bench : SINGLE BENCH

Advocate : Sajjan Singh, Sandeep Shah, Sanjay Nahar, Rishabh Shrimali, Suresh? Shrimali

Final Decision : Dismissed

Judgement

1. This regular Civil First Appeal under sec.96 CPC has been filed against judgment & decree dated 05.06.2010 passed by Additional District Judge No.1, Udaipur, in Civil Original Suit No.10/2010, whereby plaint of appellants for declaration and permanent injunction was rejected under Order 7 rule 11(d) CPC.
2. Briefly stated, the appellants filed a civil suit against the defendant-respondents for declaration and permanent injunction with the contention that there is a historical temple, situated at village Palasma, Tehsil Gogunda, District Udaipur, which was constructed by ancestor of the appellants - Prabhuji Joshi, who

had constructed and established in all 5 temples.

3. After narrating entire history of placing deities in the temples in the suit, inter alia, it was submitted that a land measuring 3063 bighas was granted to appellants' ancestors by then Maharaja Sumer Singhji. It was also stated that since time of late Shri Prabhuji, the descendents of late Prabhuji Joshi had been regularly doing "seva-pooja" in these temples and Pujaris and Sadhus were appointed as per need. It was also submitted annual fair is also conducted on Jal-Jhulani Gyaras, which was entirely conducted, controlled and managed by the family members of late Shri Prabhuji Joshi. An incident about theft of an idol from temple on 30.08.2009 was also mentioned by appellants.

4. It was submitted that the temple premises belong to family of the appellants but the respondents are bent upon to deprive them from their property (temples), to which they have no right. It was stated that the private defendants have no right or title over the property of the temples, they are mere Pujaris and they have no right to interfere in the management, seva-pooja and properties of the temples. They are liable to be restrained from interfering in the properties of appellants in any manner.

5. It was also prayed that a declaration may be made to the effect that the properties, described in para 13 of the plaint, are properties of late Shri Prabhuji Joshi and his descendents and the plaintiff-appellants have right to maintain the properties and they have inherited rights from their ancestors. It was further prayed that the respondent-defendants may be restrained from interfering with the management of the properties and they may also be restrained from damaging the properties in any way.

6. The defendant-respondent Bishan Singh and others filed an application under Order 7 rule 11 read with sec.151 CPC before

the trial court and prayed for rejection of the plaint, inter alia, on various grounds, whereby it was stated that the temple is a public Trust and the proceedings for registration of the Trust are pending before the Devsthan Department and hence, the civil court has no jurisdiction. The appellants submitted reply to the application moved under Order 7 rule 11 CPC and submitted, inter alia, that the suit does not relate to public Trust and the reliefs claimed in the suit can very well be granted by the civil court and prayed for rejection of the aforesaid application of defendants filed under Order 7 rule 11 CPC.

7. After hearing arguments of the parties, the learned trial court vide order dated 05.06.2010 proceeded to reject the plaint of the appellant-plaintiffs and directed for framing of the decree to that effect.

8. Being aggrieved by the order & decree dated 05.06.2010, the appellants preferred this appeal on the grounds that the trial court failed to construe the law on the point, as no plaint can be rejected on the basis of allegations made by defendants. It was submitted that for deciding maintainability of a suit, the court is required to merely look into the statements made in the plaint and nothing else. It was further contended that while deciding the application filed under Order 7 rule 11 CPC, the court can not consider the defence pleas taken by the defendants because it is settled law that the jurisdiction to dismiss a suit has to be distinguished from jurisdiction to reject a plaint. The trial court has completely lost sight of the law settled in this regard by Hon"ble Apex Court as well as followed by this Hon"ble Court.

9. It was also contended that the learned court below has completely failed to appreciate that the proceedings before the Devsthan Department are separate and distinguished and has

nothing to do with the jurisdiction of the civil court, before whom the appellant-plaintiffs filed a suit for protection of civil rights under sec.9 CPC. Non-consideration of the legal aspects by the learned court below has resulted in grave failure of justice to the appellants and the impugned order deserves to be quashed and set aside.

10. In the light of the arguments advanced by the learned counsel for the plaintiff-appellants, perused the record and heard learned counsel for the parties.

11. This Court is to be decide whether rejection of a plaint under Order 7 rule 11 CPC, in view of facts and circumstances of this case, was justified or not?

12. In the suit before the trial court, the appellant-plaintiffs after narrating entire history of placing deities in the temples, stated that since time of late Prabhuji Joshi, his descendents had been doing seva-pooja in those temples and Pujaris and Sadhus have been appointed as per need. Annual prayer is also being conducted on Jal-Jhulni Gyaras, which was being controlled and managed by family members of late Prabhuji Joshi. The temple premises belong to family of the appellants and the respondents are bent upon to deprive the appellants from their property, to which they have no right.

13. In this connection, contentions made in paras 22, 23 and 24 of the plaint have been looked into and considered. The relevant portion in para 22 is quoted herein below:

"VERNACULAR MATTER OMITTED"

14. This shows that no date has been given as to on which date said cause of action arose against the defendants. In para 23, it was mentioned that "VERNACULAR MATTER OMITTED" and nothing more is mentioned.

15. The prayer in relief clause in the last paras are also noticed,
which reads as follows:

"VERNACULAR MATTER OMITTED"

16. Learned counsel for the appellants cited AIR 2006 SC
1828: Mayar (H.K.) Ltd & ors v. Owners & Parties, Vessel
M.V. Fortune Express & ors. and contended that under Order 7
rule 11 CPC the court has jurisdiction to reject the plaint where it
does not disclose cause of action, where the relief claimed is
undervalued and the valuation is not corrected within the time as
fixed by the court. The categorical observations made by the
Hon"ble Apex Court are reproduced herein below:

"10. Under Order VII Rule 11 of the Code, the Court has jurisdiction to reject the plaint where it does not disclose a cause of action, where the relief claimed is undervalued and the valuation is not corrected within a time as fixed by the Court, where insufficient court fee is paid and the additional court fee is not supplied within the period given by the Court, and where the suit appears from the statement in the plaint to be barred by any law. Rejection of the plaint in exercise of the powers under Order VII Rule 11 of the Code would be on consideration of the principles laid down by this Court. In T. Arivandandam vs. T.V. Satyapal and Another, (1977) 4 SCC 467, this Court has held that if on a meaningful, not formal, reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the Court should exercise its power under Order VII Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. In Roop Lal Sethi vs. Nachhattar Singh Gill, (1982) 3 S CC 487, this Court has held that where the plaint discloses no cause of action, it is obligatory upon the court to reject the plaint as a whole under Order VII Rule 11 of the Code, but the rule does not justify the rejection of any particular portion of a plaint. Therefore, the High Court could not act under Order VII Rule 11(a) of the Code for striking down certain paragraphs nor the High Court could act under Order VI Rule 16 to strike out the paragraphs in absence of anything to show that the averments in those paragraphs are either unnecessary, frivolous or vexatious, or that they are such as may tend to prejudice, embarrass or delay the fair trial of the case, or constitute an abuse of the process of the court. In ITC Ltd. Vs. Debts Recovery Appellate Tribunal, (1998) 2 SCC 70, it was held that the basic question to be decided while dealing with an application filed by the defendant under Order VII Rule 11 of the Code is to find out whether the real cause of action has been set out in the plaint or something illusory has been projected in the plaint with a view to get out of the said provision. In Saleem Bhai and Others vs. State of Maharashtra and Others,

(2003) 1 SCC 557, this Court has held that the trial court can exercise its powers under Order VII Rule 11 of the Code 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 and for the said purpose the averments in the plaint are germane and the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. In *Popat and Kotecha Property vs. State Bank of India Staff Association*, (2005) 7 SCC 510, this Court has culled out the legal ambit of Rule 11 of Order VII of the Code in these words :

"There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence of a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time, it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities."

17. The learned counsel for the appellants also cited judgment of

Hon"ble Supreme Court reported in (2005) 6 SCC 641:

Vinayaka Dev, Idagunji & others v. Shivaram & others and

contended that in a suit for declaration that the plaintiffs were hereditary archaks (pujaris) of a temple and consequential relief for injunction restraining the defendants from interfering with that right, plaintiffs' right is a personal/private right of Pooja and not a public right in a public Trust.

17. Learned counsel for the appellants also contended that the defence of the defendants can not be considered at this stage and from the facts stated in the plaint, it does not appear that the suit is barred by law. In support of this contention, he cited 2010 (1) DNJ (Raj) 495: *Ramswaroop & ors. v. Thakurji Shri Kalyanji Maharaj & anr.* He also cited decision reported in 2008(3) DNJ (Raj) 1238: *Secretary, Ramdev Trust Committee v. Mangu Das & ors .*, contending that they filed a suit seeking declaration

and perpetual injunction in relation to their claim as hereditary Pujaris of temples and hence, the suit of appellant-plaintiffs filed in civil court is not barred by law.

18. Having considered the rulings cited by learned counsel for the appellant-plaintiffs, in light of position of law as settled by Hon"ble Apex Court in AIR 2006 SC 1828 in the present case there is no mention in paras 22, 23 of the plaint as to when said cause of action arose to the plaintiffs against the defendants. Even the facts as mentioned in the plaint do not disclose who obstructed the rights of the plaintiff-appellants regarding seva-pooja or regarding their ancestral property nor any date is given when such obstruction was caused. Merely stating that the defendants want to interfere or obstruct their rights, is not sufficient to disclose any cause of action. Mere apprehension is not sufficient.

19. It is admitted position that in respect of temples, a public Trust is in existence and for registration of this public Trust, an application was filed before the Assistant Commissioner, Devsthan, Udaipur by the working Trustees and its President Paras Ram, who is plaintiff-appellant. He himself invoked jurisdiction under provisions of the Rajasthan Public Trust Act. The application is still pending under provisions of the Rajasthan Public Trust Act, wherein an inquiry is to be conducted under sec.18 of the Act by the Assistant Commissioner before registration of the public Trust. The appellant-plaintiffs, in the interest of said Trust and with intention to protect the property under the Trust, has set in motion proceedings under the provisions of the Rajasthan Public Trust Act.

20. The respondents contended that a civil suit can only be filed against entries made in the Register under sec.21 of the Public Trust Act after conducting inquiry under sec.18 of the Act. Section

29 of the Act completely bars jurisdiction of civil court to entertain a suit in respect of any right on behalf of the public Trust, which is required to be registered under the Act but has not been registered and it shall not be heard or decided by any civil court. In the present case, a public Trust is required to be registered and for that purpose the appellant-plaintiff himself has set in motion the provisions of the Rajasthan Public Trust Act by submitting an application for registration, which is still pending.

21. The respondents in support of their contention relied on AIR 1973 Raj 13 {1972 WLN 709}: Jagannath & ors. v. Satya Narain & ors ., contending that a bare reading of section 29 of the Act shows that it is a bar created against certain suits by unregistered Trust. It applies when a public trust, which is required to be registered under this Act, has not been registered. Then no suit to enforce a right on behalf of the public trust shall be heard or decided by any court. Section 73 of the Act further clearly bars jurisdiction of civil court. The provisions of sec.73 of the Act read as under:

"Sec.73- Bar of jurisdiction:

Save as expressly provided in this Act, no civil court shall have jurisdiction to decide or deal with any question which is by or under this Act to be decided or dealt with by any officer or authority under this Act or in respect of which the decision or order of such officer or authority has been made final and conclusive."

22. The learned trial court has rightly considered the factual aspects of this case. As per pleadings in the suit, no cause of action is disclosed and in view of the fact that an application for registration of the Trust was moved by the plaintiff-appellant himself, the provisions of the Rajasthan Public Trust Act would apply in the facts & circumstances of the case and the jurisdiction of the civil court is barred in view of provisions contained in sections 29 and 73 of the Act.

23. Thus, the arguments advanced by the appellant are not tenable. This appeal has no merit and liable to be dismissed.

24. This appeal is, therefore, dismissed.