

(2008) 09 DEL CK 0181
In the Delhi High Court
Case No : F.A.O. (OS) No. 79 of 2008

Smt. Sadhana Rai and Another	Vs	APPELLANT
Smt. Bimla Rai and Others		RESPONDENT

Date of Decision : 25-09-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, Order 7 Rule 13
Delhi High Court Rules and Orders — Rule 5
Registration Act, 1908 — Section 17
Specific Relief Act, 1963 — Section 2, 41
Transfer of Property Act, 1882 — Section 123

Citation : (2008) 155 DLT 496 : (2009) 2 ILR Delhi 557

Hon'ble Judges : Manmohan Singh, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Kailash Vasudev, Neeraj Kishan Kaul, Manik Dogra, Sonali Jaitley, Jayesh Bakshi, Vinod K. Shukla, Amit Kr. Singh, Karun Mehta and Shikha Sarin, for the Appellant; Naveen Chawla and Sandeep Mittal, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—The respondents No. 1 and 2 herein (Smt. Bimla Rai and Smt. Malvika Rai) are the co-plaintiffs, who have filed Suit No. 1158/2005 in this Court for partition and permanent injunction. The two appellants (Smt. Sadhana Rai and Sh. Vinay Rai) are impleaded as defendants No. 1 and 2 in that suit. The respondents No. 3 and 4 herein (Sh. Kulwant Rai and Sh. Anil Rai) are the defendants No. 3 and 4 in the said suit. The appellants (Smt. Sadhana Rai and Sh. Vinay Rai) think that the suit cannot proceed, as, according to them, the plaint requires outright rejection on as many as six grounds. Therefore, they moved an application under Order VII Rule 11 CPC pleading those grounds and seeking rejection of the plaint. However, the learned Single Judge has opined otherwise. He found no merit in any of the grounds raised on the basis of which it is pleaded by the appellants that there is no cause of action for filing the suit. Consequently, vide orders dated 30. 11. 2007, application of the appellants is

dismissed as meritless. Not satisfied, the appellants have impugned that order in the present appeal.

2. Before we advert to the pleas raised in the application under Order VII Rule 11 CPC by the appellants herein, it would be appropriate to state in brief the facts and averments on which the plaintiffs have founded the suit for partition and permanent injunction.

3. It is the case of the plaintiffs in the plaint that all the parties to the suit are members of Rai family with the defendant No. 3 (Sh. Kulwant Rai) as the Patriarch of the family. He is the husband of the plaintiff No. 1 (Smt. Bimla Rai). Defendants No. 2 and 4 (Sh. Vinay Rai and Sh. Anil Rai) are the two sons of the defendant No. 3 (Sh. Kulwant Rai) and plaintiff No. 2 and defendant No. 1 (Smt. Malvika Rai and Smt. Sadhana Rai) are his daughter-in-law, i. e. wives of the defendants No. 4 and 2 (Sh. Anil Rai and Sh. Vinay Rai) respectively. Thus, the suit is filed by the mother-in-law and daughter-in-law in which the defendants are the husband, two sons and second daughter-in-law of the plaintiff No. 1 (Smt. Bimla Rai).

4. According to the plaintiffs, the defendant No. 3 and his two sons, namely, defendants No. 2 and 4 acquired leasehold rights in respect of 1/3rd share each in the suit property under the perpetual lease dated 27. 2. 1974 and another perpetual lease dated 1. 3. 1974. It is further averred that in order to give rights in the said property to the three ladies, namely, wives of defendants No. 3, 2 and 4 (Sh. Kulwant Rai, Sh. Vinay Rai and Sh. Anil Rai), their husbands, i. e. defendants No. 3, 2 and 4 gifted their leasehold rights in favour of their respective wives, namely, plaintiffs No. 1, 2 (Smt. Bimla Rai and Smt. Malvika Rai) and defendant No. 1 (Smt. Sadhana Rai) in the suit property. For this, Gift Deed dated 1. 4. 2000 was executed by them. It is also alleged that the father and his two sons now comprise three separate units of Rai family along with their respective family members. All the three units are in possession of different areas, which are shown in the plan annexed with the plaint in pink, blue and red colours. The areas marked in green colour are stated to be common areas. It is also asserted that on 19. 3. 2000 an agreement was executed between the parties which was titled as 'The Rai Family Agreement' and the same is partly implemented wherein it was agreed that all the three units will have 1/3rd share in the property. The plaint thereafter alleges that of late there has been some conflicts and tensions between the three units which has necessitated the plaintiffs to file the suit so that there is proper demarcation of the property in three units.

5. In the application under Order VII Rule 11 CPC filed by the appellants (defendants No. 1 and 2 in the suit, who are husband and wife) somewhat different story is projected. According to them, the property in question of which partition is sought, viz. , property bearing No. 12, Aurangzeb Lane, New Delhi was given by the Central Government to one Rai Bahadur Sardar Baisakha Singh vide permanent lease dated 22. 12. 1931. This was purchased by three private

limited companies, namely, (i) M/s. Allied Finance Pvt. Ltd. , (ii) M/s. Kulwant Rai and Sons Pvt. Ltd. (name now changed to RKKR International Pvt. Ltd.) and (iii) M/s. Ram Kishan Kulwant Rai Industries Pvt. Ltd. It was also mutated in favour of these three companies by the L&DO. One-third share in favour of M/s. RKKR International Pvt. Ltd. was purchased by another company, namely, M/s. New Peak Real Estate (P) Ltd. pursuant to a court decree dated 16. 10. 1992 which became the successor-in-interest to the extent of that share in place of M/s. RKKR International Pvt. Ltd.

6. On this basis, the appellants pleaded in the application under Order VII Rule 11 CPC that the suit for partition filed by the plaintiffs was misconceived as the plaintiffs and the defendants were not the co-owners of the property in question which vests with the aforesaid three companies, who are separate legal entities under the provisions of the Indian Companies Act. In addition, it was pleaded that the plaintiffs had admitted that a perpetual lease deed dated 27. 2. 1974 was executed by the then landlords in favour of the defendant No. 3 in respect of an undivided share in the aforesaid property; another perpetual lease deed dated 1. 3. 1974 was executed in favour of Sh. Jaswant Rai, brother of the defendant No. 3 (Sh. Kulwant Rai) at Rs. 825/- per month in respect of an undivided share in the property and third perpetual lease deed dated 1. 3. 1974 was executed in favour of the defendant No. 2 (Sh. Vinay Rai) at Rs. 600/- per month. It was also pointed out that the plaintiffs had averred in the plaint that by letter dated 12. 3. 1992 written by Sh. Jaswant Rai, defendant No. 3 (Sh. Anil Rai) was substituted as lessee with the consent of the lessors but this transfer of leasehold rights by means of that letter is void for want of proper stamp, lack of registration and absence of attestation by the two witnesses. The effect would be that the leasehold rights have not been transferred from Sh. Jaswant Rai to Sh. Anil Rai in this manner. The grounds taken in the application, on the basis of which rejection of the plaint was sought, are the following:

a) The ownership vests with the three companies and as neither the plaintiffs nor the defendants are the co-owners, suit for partition of the property between these parties is not maintainable.

b) Sh. Anil Rai never became lessee as letter dated 12. 3. 1992 by Sh. Jaswant Rai in favour of Sh. Anil Rai is void;

c) The Gift Deeds dated 1. 4. 2000 executed by Sh. Kulwant Rai, Sh. Vinay Rai and Sh. Anil Rai in favour of their wives are void and of no consequence as they are neither registered nor attested by the two attesting witnesses, which is the mandatory requirement and therefore, they cannot be looked into and are not admissible in evidence in view of legal provisions contained in Section 17 of the Registration Act, Stamp Act as well as Section 123 of the Transfer of Property Act. In any case, the Gift Deed executed by Sh. Anil Rai in favour of his wife (plaintiff No. 2) is of no effect as there was no valid transfer of leasehold rights in favour of Sh. Anil Rai himself, in the first instance. The plaintiffs have not acquired any leasehold/tenancy rights in the suit premises and therefore, they do

not have any locus to file the suit for partition.

d) As the rent of the three tenancies is below Rs. 3,500/- and even the combined rent is less than Rs. 3,500/-, the tenancies would be governed by the Delhi Rent Control Act. Under the said Act there is a bar to sub-letting and on this ground also the suit is not maintainable.

e) Rejection of the plaint is also sought on the plea that court fee has not been properly paid. Suit is not properly evaluated and appropriate court fee is not paid, the plaint is not signed, verified in accordance with the provisions of the Delhi High Court Rules and the CPC and the suit is bad for non-joinder of necessary parties as the lessors of the demised premises are not impleaded.

7. The learned Single Judge did not find favour with the aforesaid contentions raised in the application. It is observed in the impugned order that for decision of the application under Order VII Rule 11 of the CPC, averments in the plaint alone are to be read without looking at the defence. Therefore, it is from the averments made in the plaint that one has to see whether the plaint discloses cause of action or not. The impugned order thereafter proceeds to discuss the meaning of cause of action with reference to certain case law. After stating the legal position the impugned order proceeds to discuss the nature of averments made in the plaint which reflects that the three units of the Rai family are seeking segregation of their portions in the property so that these units live in harmony and if one looks into the averments made in the plaint alone in this behalf, there is a proper and valid cause of action disclosed in the plaint.

8. The learned Counsel appearing on behalf of the appellants laid their challenge to the impugned order by formulating the following proposition:

i) it was not in dispute that the two plaintiffs were seeking their right in the suit property on the basis of Gift Deeds which were admittedly unregistered. Such unregistered Gift Deeds could not provide any cause of action and therefore, there was no right to sue on the basis of these documents. Referring to the judgment of the Supreme Court in *Smt. Gombibai (dead) through LRs. and others Vs. Mattulal (dead) through LRs.*, it was submitted that in the absence of any registered instrument of gift and acceptance thereof by the donee, the gift is not complete in the eyes of law and therefore, no interest devolved upon the donor by operation of Section 17 of the Registration Act.

ii) It was submitted that in the following cases suit founded on unregistered documents was held to be not maintainable and without cause of action. First case relied upon was *Shaik Khadaru Masthan Vs. Smt. Sayyed Fathimun Bee*, . That was a case wherein suit for injunction was filed on the basis of an unregistered and unstamped Gift Deed. An objection was raised by the defendant that the same is inadmissible in evidence for want of proper stamp duty and registration. The Civil Judge before whom the suit for injunction was filed upheld the objection. Against the order of the Civil Judge, the plaintiff in that case filed revision petition before the High Court which was also dismissed holding that the

suit was filed on an unregistered and unstamped document. It was held that once the gift of immovable property worth more than Rs. 100/- is evidenced by a document it attracts Section 17 of the Registration Act. An unregistered Gift Deed effecting immovable property cannot be admitted in evidence even for collateral purpose.

The second case cited by the learned Counsel for the appellants is Pittala Kistaiah Vs. Smt. Ganta Laxmi and Another, . In that case a plea was taken that the alleged unregistered Gift Deed being void, it will not confer any title related to the scheduled property in favour of plaintiff. The second appeal was dismissed by the High Court upholding the trial court order that the unregistered Gift Deed cannot be looked into for any purpose and even otherwise.

The next case relied upon by the appellants is Daewoo Anchor Electronics Ltd. Vs. S.L. Bhalla and Others, . It was held in that case that no cause of action existed on the basis of a Lease Deed which was not registered in terms of the Registration Act and the same was void document on account of non-registration. It was also held that a void document cannot be the basis for filing a suit either for declaration or for injunction or for relief of recovery of amount. The relevant observations made in the aforesaid case read thus:

9. At this stage, while deciding an application of this nature Court has to see whether the plaint discloses a cause of action. Two arguments have been advanced for rejection of the plaint. Firstly, the Lease Deed being void for want of registration could not be the basis of the suit for declaration or for any other ancillary prayers based on the said lease deed. Secondly, relief as prayed in the plaint were barred by law pursuant to Order VII Rule 11 and Sub-rule (d) of the CPC.

xxxxx 14. Coming to the next submission of learned Counsel for the plaintiff that relief of declaration if cannot be granted on account of document being void for want of registration relief of injunction as well as for recovery could still be granted. For grant of a relief of injunction, the law is well settled. u/s 41 of the Specific Relief Act, an injunction has to be granted if there is a breach of a legal obligation. Legal obligation has been defined u/s 2 of the Specific Relief Act. The plaint is totally silent with regard to averment on breach of obligation and no case has been made out for grant of injunction in the plaint.

Plaint in the present case does not disclose any cause of action with regard to the grant of relief so as to enable this Court to grant the relief under the well settled principle of law of injunction.

iii) Next submission was, no doubt, defence of the defendants at this stage was not to be seen. However, even in order to find out the cause of action in the suit, the duty of the court was to see as to whether there was ?real? cause of action and to ensure that the plaint does not project illusory cause of action by clever drafting as held in I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and Others, . The creation of an illusion in the plaint can certainly be unraveled and

exposed by the court while dealing with an application under Order VII Rule 11 CPC. For this, reliance was also placed on *Sopan Sukhdeo Sable and Others Vs. Assistant Charity Commissioner and Others*, .

iv) it was also argued that in the lease deeds there was no provision for sub-letting. As reliance was placed by the plaintiffs on this lease deed, the trial court could peruse the said lease deed to find out as to whether lessees could execute any further documents in the form of Gift Deeds or letter dated 12. 3. 1992 written by late Sh. Jaswant Rai in favour of Sh. Anil Rai. The learned Counsel referred to the judgment of the Supreme Court in *Liverpool and London S.P. and I Asson. Ltd. Vs. M.V. Sea Success I and Another*, to support their submission that for disposal of such an application, documents filed must be taken into consideration. It was pointed out that this judgment was recently followed in *Hardesh Ores Pvt. Ltd. Vs. Hede and Company*,

9. learned Counsel for the respondents, on the other hand, supported their case on the basis of reasons given by the learned Single Judge in the impugned order. They reiterated that at this stage only the averments contained in the plaint are to be seen. The three companies, which were the joint owners, had executed lease deeds in favour of the defendants No. 3, 2 and 4 (Sh. Kulwant Rai, Sh. Vinay Rai and Sh. Anil Rai), who had gifted their rights in favour of their wives, namely, plaintiffs No. 1, defendant No. 1 and plaintiff No. 2 (Smt. Bimla Rai, Smt. Sadhana Rai and Smt. Malvika Rai) respectively. After the said Gift Deed in their favour it is these three ladies who were paying the rents to the three companies (lessors) and those companies had accepted the rents from them without any demur or protest. Therefore, it was not open to the defendants No. 1 and 2 (appellants herein) to ride on the shoulders of the lessors and take such a plea. It was also submitted that undisputed facts and at least the averments in the plaint were that there were three units of Rai Family, namely, Sh. Kulwant Rai and his wife, Sh. Anil Rai and his wife and Sh. Vinay Rai and his wife who had been living in the suit property after demarcating the respective portions and in view of the bickering between the parties, suit was filed for partition and segregation of the portions so that they are able to live peacefully. learned Counsel appearing for the respondents also referred to the following three judgments on the basis of which contention was that the plaint could not be rejected under Order VII Rule 11 CPC at this stage:

i) *Badri Narain Jha and Others Vs. Rameshwar Dayal Singh and Others*,

ii) *Chhotalal Maganlal Bachkaniwala and Ors. v. Mayur Silk Mills, Surat and Ors.* 1978 (1) RCJ 71.

iii) *Ram Lal Sachdev Vs. Smt. Sneh Sinha*,

10. In order to appreciate the respective contentions of the learned Counsel for the parties and to decide as to whether the approach of learned Single Judge in passing the impugned order is correct and justified, we may first take note of some of the facts on which there is no dispute, namely, the admitted facts. The

suit property was sold by the erstwhile owner, vide sale deed dated 18. 11. 1971, in favour of three companies, namely, (i) M/s. Allied Finance Pvt. Ltd. , (ii) M/s. Kulwant Rai and Sons Pvt. Ltd. @ RKKR International Pvt. Ltd. (which was later on purchased by M/s. New Peak Real Estate (P) Ltd. in a court sale on 16. 10. 1992) and (iii) M/s. Ram Kishan Kulwant Rai Industries Pvt. Ltd.

11. The joint owners of the suit property, thus, are the three companies registered under the Companies Act who have their independent legal entity. No doubt, these are the companies which belong to the family of the parties in question. The aforesaid three companies executed three perpetual lease deeds in favour of Sh. Kulwant Rai, Sh. Jaswant Rai and Sh. Vinay Rai vide lease deeds dated 27. 2. 1974 and 1. 3. 1974 respectively. Sh. Jaswant Rai gifted the said lease/tenancy rights in favour of Sh. Anil Rai on 12. 3. 1992 against the payment of Rs. 1,05,000/- to the three companies (owners). This gift deed is unregistered. Sh. Anil Rai in turn gifted his lease/tenancy rights in favour of his wife Smt. Malvika Rai vide unregistered gift deed dated 1. 4. 2000. Sh. Kulwant Rai gifted his tenancy rights in favour of his daughter-in-law Smt. Sadhna Rai on 1. 4. 2000. This is also an unregistered instrument. On the same day Sh. Vinay Rai also gifted his lease/tenancy rights in favour of Smt. Bimla Rai. This is again unregistered gift deed.

12. On 19. 3. 2000 a family agreement was also executed between the parties named as 'Rai Family Agreement'. It is pursuant to this that three gift deeds dated 1. 4. 2000 were executed by Sh. Kulwant Rai, Sh. Anil Rai and Sh. Vinay Rai as mentioned above. Thus, co-owners of the suit property remain the three companies. They had executed lease deeds in favour of three male persons in the family who have, in turn, on the basis of the purported family arrangement, gifted the said lease on 1. 4. 2000 in favour of Smt. Sadhna Rai, Smt. Malvika Rai and Smt. Bimla Rai. Therefore, as far as these three ladies are concerned, their claim to inherit the lease/tenancy rights flows from the aforesaid gift deeds. Out of these three ladies, two, namely, Smt. Bimla Rai and Smt. Malvika Rai have filed the suit for partition and permanent injunction with which we are concerned. The prayer, inter alia, is for passing a preliminary decree of partition declaring that the three families, namely, plaintiff No. 1 and defendant No. 3; plaintiff No. 2 and defendant No. 4 and defendants No. 1 and 2 have right to enjoy 1/3rd leasehold rights in the suit property as per their possession and the common areas delineated in the site plan, filed as Schedule I.

13. It is in this context that the objection of the appellants in their application under Order 7 Rule 11 CPC is that on the basis of unregistered gift deeds they cannot claim partition as those unregistered lease deeds do not provide any cause of action.

14. Since at this stage we have to look into the averments made in the plaint alone and cannot look into the defence of those defendants who are contesting the suit, we would like to discuss the averments on the basis of suit is filed. After stating about the perpetual joint lease deeds executed by the companies in

favour of male members of the family in para-3 of the plaint, in para-4 it is stated that for the purpose of securing the ladies of the house the male members have gifted their leasehold rights to them which gifts were recorded in declaration of gift dated 1. 4. 2000. In para-6 there is a mention about 'Rai Family Agreement' dated 19. 3. 2000. In para-5 it is mentioned that the three families are in possession of different areas of the property shown in pink, blue and red colours in the site plan at Schedule I. The three families have been living in those three separate units. From paras 7 to 11 certain differences which have developed between Vinay Rai and his wife on the one hand and Kulwant Rai and Anil Rai and their families on the other hand are mentioned, which, according to the plaintiffs, have necessitated the need for filing the suit for partition.

15. It is clear from the above that the two plaintiffs have not founded their claim for partition entire on the basis of the two gift deeds. They have referred to family agreement with specific averment that it had been partly implemented as well. It is also stated that the parties agreed that there would be three units and they will have one unit each to their share. They have also clearly mentioned the areas which are in possession of the three families. In the prayer clause partition of tenancy is not sought in favour of the three ladies who have been assigned the tenancy rights by gift deeds. On the contrary, the decree of partition sought in favour of both husband and wife of each family as is clear from prayers (a) and (c), which read as under:-

(a) pass a preliminary decree of partition declaring the plaintiff No. 1 & Defendant No. 3, plaintiff No. 2 & Defendant No. 4 and Defendant No. 1&2's right to enjoy one-third leasehold rights in the said property at 12, Aurangzeb Lane, New Delhi, as per their possession and the common areas delineated in the Site Plan at Schedule I;

(b) xxxxx (c) pass a Decree of Partition directing that the Leasehold rights in the property bearing No. 12, Aurangzeb Lane, New Delhi, be partitioned by metes and bounds in the ratio of 1/3rd share each amongst the plaintiff Nos. 1 & Defendant No. 3, plaintiff Nos. 2 & Defendant No. 4 and Defendant Nos. 1 & 2 for their exclusive use and occupation without any hindrance or disturbance from the other;

16. We are, therefore, of the opinion that the learned Single Judge rightly remarked that even if the three gift deeds are unregistered, the perpetual lease deeds executed by the co-owner companies in favour of three male members are valid and therefore, leasehold rights can be divided on that basis as well. We are in agreement with the learned Single Judge who has discussed the matter keeping in view the scope and ambit of Order 7 Rule 11 of the CPC and rightly pointed out that in so far as the averments made in the plaint are concerned, they reflect that the three units of the Rai Family are seeking segregation of their portions in the property so that these units live in harmony. Cause of action is traced into those averments. Primary discussion on this aspect, while rejecting the contentions of the appellants in the said application, runs as follows:

22. If the defendant No. 2 & 3 and Shri Jaswant Rai were the lessees, whether they could create further lease in favor of others without the written consent of the landlord of the premises, is the main dispute raised by the applicant. Whether a tenant can gift the tenancy rights and on such gift the tenancy in favor of the tenant will be extinguished and a new tenancy will be created in favor of the donee or the donee will be sub lessee or will have independent rights is to be ascertained on the basis of the plea of the applicant. If one reads the entire plaint, it emerges that three units of family seek different portions of the tenanted property and out of these three units the lease deeds in favor of defendant No. 2 and defendant No. 3 are admitted. Regarding the third unit the lease deed is in favor of Shri Jaswant Rai who has attorned the tenancy in favor of his brother Defendant No. 4. Whether he can do it or not requires consideration, in the peculiar facts and circumstances of the case. What also has to be determined whether defendant No. 2,3 & 4 could transfer assign the rights in favor of plaintiff Nos. 1 & 2 and defendant No. 1. The rejection of the plaint is also sought on the ground that the lessor of the premises is a necessary party in the facts and circumstances of the case. Whether the landlord(s) are necessary parties to the suit for division of tenancy rights is a plea in defense which may not be considered for rejection of the plaint in the facts and circumstances of the case. The Apex Court has held that the purported failure of the pleadings to disclose a cause of action is distinct from the absence of full particulars. In ascertaining whether the plaint shows a cause of action the court does not enter upon a trial of the issues affecting the merits of the claim made by the plaintiff nor can take into consideration the defenses raises by the defendants nor it is appropriate for the Court to make an elaborate enquiry into complicated question of law or fact.

17. In the following paragraphs, other grounds taken in the application are answered as follows.

(i) Since three units of the family are seeking partition, even if the alleged Gift Deeds are ultimately held to be invalid, the lease deeds in favour of other members of the three units are valid. Therefore, whether the leasehold rights can be divided or not has to be adjudicated, specially because the status of the parties in the suit for partition, co-lessee, i. e. , the plaintiffs and the defendants shall be the same.

(ii) ?A fortiori, this Court will not go into question whether the parting of portion of tenancies are barred under the provision of the Delhi Rent Control Act, 1958 for the purposes of determining whether the plaint is liable to be rejected or not. ? In any case, if there is sub-letting, that gives cause of action to the lessor and not to some of the co-lessees. If the landlord has consented and does not take action, co-lessees or sub-lessees cannot take this plea and seek rejection of the plaint on this ground.

(iii) Likewise, the ground that plaint has not been signed and verified properly or is defective or it is not maintainable for non-joinder of necessary parties are

defences raised by the appellants, which cannot be looked into.

18. Once the cause of action is deduced on the basis of the aforesaid pleadings in the plaint, whether plaintiffs are likely to succeed on the basis of said cause of action or whether it affords a strong case in their favour is not an aspect into which enquiry is required at this stage. In *Vijay Pratap Singh Vs. Dukh Haran Nath Singh and Another*, the Supreme Court held: (AIR pp. 943-44, para 9):

By the express terms of Rule 5 Clause (d), the court is concerned to ascertain whether the allegations made in the petition show a cause of action. The court has not to see whether the claim made by the petitioner is likely to succeed: it has merely to satisfy itself that the allegations made in the petition, if accepted as true, would entitle the petitioner to the relief he claims. If accepting those allegations as true no case is made out for granting relief no cause of action would be shown and the petition must be rejected. But in ascertaining whether the petition shows a cause of action the court does not enter upon a trial of the issues affecting the merits of the claim made by the petitioner. It cannot take into consideration the defences which the defendant may raise upon the merits; nor is the court competent to make an elaborate enquiry into doubtful or complicated questions of law or fact. If the allegations in the petition, *prima facie*, show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact, or whether the petitioner will succeed in the claims made by him.

19. Likewise, in *D. Ramachandran Vs. R.V. Janakiraman and Others*, the Apex Court had held that the effect of dismissal of a suit is altogether different and distinct from the effect of rejection of the plaint. The Apex Court had held as under:-

Learned Single Judge fell in error in placing reliance upon the material supplied by the defendant, which alone is sufficient to set aside the impugned order. Learned Single Judge instead of proceeding to reject the plaint dismissed the suit, which approach is also erroneous. The effect of dismissal of suit is altogether different and distinct from the effect of rejection of the plaint. In case plaint is rejected under Order 7 Rule 11, CPC, filing of a fresh plaint in respect of the same cause of action is specifically, permitted under Rule 13 of Order 7, CPC. Altogether different consequence follows in the event of dismissal of suit, which has the effect of precluding the plaintiff to file a fresh suit on the same cause of action. Rejection of plaint takes away the very basis of the suit rendering as if there was no suit at all or that no suit was instituted. Order of dismissal of suit while recognizing the existence of a suit indicates its termination. While deciding the application under Order 7 Rule 11, CPC, learned Single Judge ought not and could not have dismissed the suit. Even in the decision of the Supreme Court in *T. Arvindandam's case* (Supra), relied upon by learned Counsel for the appellant, it was held that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious and merit-less, in the sense of not disclosing a clear right to sue, the Trial Court should exercise his power under Order 7 Rule 11, CPC taking

care to see that the ground mentioned therein is fulfilled. In order to fulfill that ground bare allegation made in the plaint and documents filed therewith were required to be looked into, which in the instant case clearly disclosed at least a cause of action against the defendant that defendant was liable for damages for its acts of omission and commission. It would be an altogether different situation that the plaintiff might not ultimately succeed in obtaining a decree against the defendant or that Court might come to the conclusion that suit would not be maintainable against the defendant and that plaintiff had a cause of action only against defendant's principal and its parent until in Hong Kong, but such aspect could not have been gone into at this stage. Three paragraphs of the plaint quoted above in our view do clearly disclose cause of action for the plaintiff to claim damages.

20. The Supreme Court emphasized that at this stage it is not to be examined as to whether the plaintiff would succeed in obtaining the decree against the defendant or that suit would not be maintainable against the defendant. One has to bear in mind the distinction drawn by the Supreme Court in that judgment between rejection of the plaint and dismissal of the suit. If after framing of the issues including on the maintainability of the suit, which may be a preliminary decree in case no evidence is required, the Court holds that suit is not maintainable and is to be dismissed on legal grounds including those taken by the defendants. The suit can ultimately be dismissed. When issue is to be discussed on merits, after its framing, the Court would be in a position to look into the defence of the defendants as well. Therefore, we are in agreement with the observations of the learned Single Judge who pointed out that issues in this matter had not yet been framed. Therefore, the appropriate course could be to frame the issues and treat some of the issues as preliminary issues which could be decided without evidence and decide the same, instead of rejecting the plaint as without cause of action. If such issues are ultimately decided in favour of the defendants that would result in dismissal of the suit which has altogether different consequence under Order VII Rule 13 CPC and would even preclude the plaintiffs from filing fresh suit on the same cause of action.

21. The appropriate course of action, therefore, would be to get the issues framed and if there are certain preliminary issues, get decision on those issues. We, therefore, do not find any infirmity in the impugned order and dismiss this appeal.