

**HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT JAMMU**

Reserved on 10.02.2022
Pronounced on 18.02.2022

CR No. 54/2021(O&M)

Nardev Lal and others

.....Appellant(s)/Petitioner(s)

Through: Mr. Sachin Gupta, Advocate

vs

Suresh Sharma and others

..... Respondent(s)

Through: Mr. Rohan Kidar Sharma, Advocate

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The present civil revision has been filed against the order dated 31.08.2021 passed by the learned Additional Special Mobile Magistrate (Civil Judge) R. S. Pura (hereinafter to be referred as the trial court) in suit titled, 'Suresh K. Sharma and others vs. Nardev Lal and others' by virtue of which, the application under Order 7 Rule 11 of the Code of Civil Procedure (for short the Code) filed by the petitioners for rejection of the aforesaid suit, has been dismissed.
2. The order has been impugned only on the ground that the plaint was liable to be rejected as the learned trial court lacked the jurisdiction in terms of section 31 of the Jammu and Kashmir Evacuees (Administration of Property) Act, 2006.
3. Mr. Sachin Gupta, learned counsel for the petitioners, during the course of arguments, has reiterated the same grounds those have been taken in the memo of the petition.

4. *Per contra*, Mr. Rohan Kidar Sharma, learned counsel for the respondents submitted that the learned trial court has passed the order impugned well within the domain of law and there is no illegality in the same.
5. The facts necessary for the disposal of the present petition are that a suit in a representative capacity has been filed by the respondents herein for grant of mandatory injunction along with other reliefs. In the said suit, it was pleaded that the respondents being the residents of Village, Brij Nagar, Panchayat Kharian, have a common cause of safeguarding the piece of land comprising khasra No. 188 min and the petitioners herein wanted to grab the above mentioned property by raising illegal construction. The petitioners herein filed the written statements in the suit in which it was stated that the suit property is a custodian property and some other factual aspects were also narrated by the petitioners in the said written statement, those are not necessary for determination of the present controversy. The petitioners herein also filed the application under Order 7 Rule 11 of the Code for rejection of the plaint primarily on the ground that the plaint is required to be rejected as the suit property is an evacuee property and in view of section 31 of the Jammu and Kashmir State Evacuees (Administration of Property) Act, 2006, no civil court has the jurisdiction to entertain the case regarding the evacuee property. It was also stated that the respondents herein had filed a petition with respect to same property before the Custodian Evacuee Property, Jammu. The said application was resisted by the respondents by pleading that the suit property is not an evacuee property as the same has not been notified as an evacuee property under section 6 of the Jammu and Kashmir State

Evacuees (Administration of Property) Act, 2006. The learned trial court after considering the arguments of both the parties dismissed the application on the ground that the petitioners have failed to produce any record or notification as per section 31 of the Jammu and Kashmir State Evacuees (Administration of Property) Act, 2006 showing the suit property as evacuee property.

6. Heard and perused the record.
7. Whether the suit property is evacuee property or not is a disputed question of fact and I do not find any reason to take any view contrary to that of the learned trial court, particularly when nothing was before the trial court to record such finding at this stage. In addition to this, I have gone through the plaint, there is no averment in the plaint also that the suit property is an evacuee property.
8. Law is well settled that while considering the application under Order 7 Rule 11 of the Code, the averments made in the plaint are required to be considered only and the defence of the defendants cannot be considered while adjudicating an application under Order 7 Rule 11 of the Code. The plaint can be rejected only when from the averments made in the plaint it can be gathered that either there is no cause of action or the court lacks the jurisdiction.
9. **In Madanuri Sri Rama Chandra Murthy v. Syed Jalal, (2017) 13 SCC 174**, the Apex Court has held as under:

"7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the Court at any stage of the suit. **The relevant facts which need to be**

looked into for deciding the application are the averments of the plaintiff only. If on an entire and meaningful reading of the plaintiff, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaintiff have to be strictly adhered to. The averments of the plaintiff have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaintiff. Even when the allegations made in the plaintiff are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaintiff can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaintiff has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

10. **In Saleem Bhai v. State of Maharashtra, 2003 1 SCC 557**, it was held with reference to Order 7 Rule 11 of the Code that the relevant facts which need to be looked into for deciding an application that there are averments in the plaintiff. The trial court can exercise the power at any stage of the suit before registering the plaintiff 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 CPC, the averments in the plaintiff are germane; the pleas taken by the

defendant in the written statement would be wholly irrelevant at that stage.

11. For all what has been discussed above, there is no illegality in the order passed by the learned trial court, as such, the present petition is dismissed.

(Rajnish Oswal)
Judge

JAMMU
18.02.2022
Rakesh

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

