

SALEEM BHAI AND ORS.

v.

STATE OF MAHARASHTRA AND ORS.

DECEMBER 17, 2002

[SYED SHAH MOHAMMED QUADRI AND ARIJIT PASAYAT, JJ.]

*Code of Civil Procedure, 1908:*

*Or.7, r.11—Rejection of plaint—Plaintiffs filing suits for declaration that certain decrees and orders passed by courts are illegal, and are null and void—Defendants filing application for rejection of the plaint contending that it does not indicate any cause of action and is barred by res judicata—Trial court directing defendants to file written statement—Order affirmed by High Court—Held, the relevant facts to be looked into for deciding an application under Order 7, r.11 are the averments in the plaint—Trial court can exercise the power under Order 7, r.11 at any stage of the suit, before registering the plaint or after issuing summons to defendant or at any time before conclusion of trial—For purpose of deciding an application under clauses (a) and (d) of r.11 of Order 7, the averments in the plaint are germane and pleas taken in written statement would be wholly irrelevant at that stage—Therefore, direction to file written statement without deciding application under Order 7, r.11 would be procedural irregularity touching the exercise of jurisdiction by trial court—Order, therefore, suffers from non-exercising of jurisdiction vested in court as well as procedural irregularity—Order set aside—Matter remitted to trial court for deciding application under Order 7, r.11 on the basis of averments made in the plaint.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8518 of 2002.

From the Judgment and Order dated 7.5.2002 of the Madhya Pradesh High Court in CR No. 256/2002.

WITH

Civil Appeal No. 8519 of 2002.

T.R. Andhyarujina, R.F. Nariman, Kailash Vasdev, K.K. Venugopal, S.V. Deshpande, G.D. Sule, Ms. Anuradha Rastogi, Murari Lal Pathak, Manish

A Pitale, Chander Shekhar Ashri, Rashid Haque, Chandra Shekhar Ashri, Arun Agarwal, Shakil Nawaz, Kuldip Singh, Pavan Kumar, K.S. Rana, S.S. Shinde, V.N. Raghupathy, W.A. Nomani, B.S. Banthia for S.K. Agnihotri for the appearing parties.

The following Order of the Court was delivered :

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Leave is granted.

These appeals arise from the common order of the High Court of Madhya Pradesh [Indore Bench] in Civil Revision Petition Nos. 256 of 2002 and 257 of 2002 dated 7th May, 2002.

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These cases have a chequered history but in the view we have taken, we do not consider it necessary to refer to the facts in any detail. Suffice it to say that Respondent No. 7 in the appeal arising out of S.L.P. (C) No. 13234 of 2002 and the sole respondent in the appeal arising out of S.L.P. (C) 14577 of 2002 filed suits in February, 2002, out of which these appeals arise. The eighth defendant in the suits is the appellant in these two appeals. The said respondents-plaintiffs in the suits claimed, *inter alia*, the following relief:

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“(2). That it be declared that the Judgement and Decree passed by the III Joint Civil Judge, Senior Division, Nagpur in Special Civil Suit No. 147 of 1967, Judgement and Decree passed by IV Additional District Judge, Nagpur in regular Civil Appeal No. 16 of 1987, and approving the same in the Judgement and Decree passed by the Hon’ble Bombay High Court, Bench at Nagpur in Second Appeal No. 132 of 1992, and while maintaining this Judgement and Decree, Judgement and order passed by the Hon’ble Supreme Court in Special Leave Petition (Civil) No. 25004/96 and in Review Petition No. 1075/97 and order passed in various Revenue case No. 8/1996-97, are illegal, not in existence, null and void and are not within the jurisdiction and therefore are not binding on the plaintiff.”

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The appellant filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short, ‘the C.P.C.’) in the suits praying the court to dismiss the suits on the ground stated therein. Before us, it is stated that the plaint is liable to be rejected under clauses (a) and (d) of Rule 11 of Order VII C.P.C. While so, the said respondents also filed an application under Order VIII Rule 10 C.P.C. to pronounce judgement in the suits as the appellant did not file his written statement. There was also an application by the appellant

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under Section 151 C.P.C. praying the court to decide first the application under Order VII Rule 11 C.P.C. By order dated 8th December, 2001, the learned Trial Judge dismissed the application under Order VIII Rule 10 as well as the application filed under Section 151 C.P.C. Insofar as the application under Order VII Rule 11 C.P.C. is concerned, the learned Judge directed the appellant to file his written statement. Aggrieved thereby, the appellant filed aforementioned revision petitions before the High Court of Madhya Pradesh [Indore Bench]. On May 7, 2002, the High Court, while confirming the order of the learned Trial Judge, reiterated the direction given by the learned Trial Judge that the appellant should file his written statement and observed that the trial court shall frame issues of law and facts arising out of pleadings and that the trial court should record its finding on the preliminary issue in accordance with law before proceeding to try the suit on facts. It is against this order of the High Court that the present appeals have been preferred.

Mr. T.R. Andhyarujina, learned senior counsel appearing for the appellant in the appeal arising out of S.L.P. (C) No. 13234 of 2002 and Mr. R.F. Nariman, learned senior counsel appearing for the appellant in the appeal arising out of S.L.P. (C) No. 14577 of 2002 have contended that having regard to the very nature of the relief claimed by the plaintiffs, the plaints are liable to be rejected under Order VII Rule 11 C.P.C. and that the court ought to have considered the said application on merits instead of giving direction to file written statement which would amount to not exercising the jurisdiction vested in the court. It is further contended that the High Court also did not appreciate that the plaints do not show any cause of action and that the plaint ought to have been rejected as the suit is barred by the principles of the *res judicata* and *lis pendense*.

Mr. K.K. Venugopal, learned senior counsel appearing for the respondents, on the other hand, drew our attention to various orders passed in earlier proceedings to show that the subject-matter of the property, items 51 and 52 of the relinquishment deed were not the suit properties in the earlier judgements, including the order passed by this Court and, therefore, neither the principle of *res judicata* nor the principle of *lis pendense* is attracted.

The short common question that arises for consideration in these appeals is, whether an application under Order VII Rule 11 C.P.C. ought to be decided on the allegations in the plaint and filing of the written statement by the contesting defendant is irrelevant and unnecessary.

Order VII Rule 11 C.P.C. reads as under:

A “11. Rejection of plaint.—The plaint shall be rejected in the following cases:-

(a) Where it does not disclose a cause of action;

B (b) Where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the court, fails to do so;

C (c) Where the relief claimed is properly valued by the plaintiff, the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, failed to do so:

(d) Where the suit appears from the statement in the plaint to be barred by any law;

(e) Where it is not filed in duplicate;

D (f) Where the plaintiff fails to comply with the provisions of rule 9;

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause great injustice to the plaintiff.”

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F A perusal of Order VII Rule 11 C.P.C. makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order VII Rule 11 C.P.C. 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. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order VII C.P.C. the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order VII Rule 11 C.P.C. cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects.

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We are, therefore, of the view that for the afore-mentioned reasons, the common order under challenge is liable to be set aside and we, accordingly, do so. We remit the cases to the trial court for deciding the application under Order VII Rule 11 C.P.C. on the basis of the averments in the plaint, after affording an opportunity of being heard to the parties in accordance with law. A

The civil appeals are, accordingly, allowed. There shall be no order as to costs. B

R.P.

Appeals allowed.