

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

CR No. 43/2024

Kishore Kumar

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

Through: Mr. Gaurab Sharma, Advocate.

vs

Ishar Dass

..... Respondent(s)

Through: None.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
28.08.2024

ORAL

1. The instant revision petition has been filed by the petitioner herein for setting aside of order dated 03.06.2024 (hereinafter to be referred as the 'Impugned Order') passed by the court of 3rd Additional Munsiff, Jammu (hereinafter to be referred as the 'Trial Court') in case titled as "*Ishar Dass vs. Kishore Kumar*".
2. The facts giving rise to the filing of instant petition reveals that the respondent herein filed a suit for permanent prohibitory injunction against the defendant petitioner herein praying therein that the defendant petitioner herein be restrained from forcibly evicting the plaintiff/respondent herein from the suit property being an immovable property covered under Khasra No. 26 min, Khata No. 130 ad Khewat No. 86 situated at Pacca Talab, Bahu Fort, Jammu.
3. During the pendency of the suit after the defendant petitioner herein entered appearance before the trial court, the defendant petitioner herein filed an application under Order 7 Rule 11 CPC seeking

rejection of plaint on the premise that the plaintiff respondent herein has given wrong description of the suit property with an aim to encroach upon the adjacent house of the defendant petitioner herein and to dispossess him therefrom and that the plaintiff respondent herein has no cause of action to maintain the suit as the plaintiff respondent herein has been out of the possession of the suit property.

4. The aforesaid application filed by the defendant petitioner herein came to be dismissed by the trial court upon considering the same in terms of impugned order dated 03.06.2024.

5. The petitioner herein has challenged the impugned order in the instant petition *inter alia* on the grounds that the same is illegal and non sustainable in the eyes of law and that the trial court failed to consider the ambit and scope of the Order 7 Rule 11 CPC while considering the application filed by the defendant petitioner herein before it for seeking rejection of the plaint of the plaintiff respondent herein.

Heard learned counsel for the parties and perused the record.

6. Before proceeding to advert to the correctness or otherwise of the impugned order, it would be appropriate to refer hereunder to the provisions of Order 7 Rule 11 CPC as also to the position of law propounded by the Apex Court in this regard.

"Order 7 Rule 11. Rejection of Plaint-

The plaint shall be rejected in the following cases:

- a) where it does not disclose a cause of action;
- b) xxx
- c) xxx
- d) xxx
- e)xxx

The Apex Court in "**Saleem Bhai vs. State of Maharashtra**, reported in **AIR 2003 (1) SCC 557**", has observed as under: -
"A perusal of Order 7 Rule 11 of the CPC, 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 7, Rule 11 of the CPC 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 purpose of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 of the CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage."

In "**Raptakos Brett and Company Limited Vs. Ganesh Property**, reported in **1998 (7) SCC 184**", Apex Court has held as follows: -

"That while considering the application for rejection of a plaint under Order VII Rule 11 CPC, the distinction that the averments made in the plaint does not make out a cause of action and that the plaintiff has no cause of action to file a suit has to be borne in mind as it is only where the averments made in the plaint does not disclose a cause of action, the plaint is liable to be rejected under Order VII Rule 11 CPC."

7. Keeping in mind the aforesaid position of law inasmuch as the principles laid down by the Apex Court in the judgments (Supra) and reverting back to the case in hand, admittedly the defendant petitioner herein maintained an application before the trial court for rejection of the plaint on the premise that the plaintiff respondent herein had given wrong description of the suit property, thus having no cause of action

to maintain suit, rendering the suit liable to be rejected in terms of Order 7 Rule 11 CPC.

It is significant to mention here that under Order 7 Rule 7 CPC when a suit relates to an immovable property, the plaint has to contain a description of the property sufficient to identify it. However, the position of law is settled by the Apex Court in case titled **S. Noordeen vs. Thiru Venkita Reddiar and others** reported in **1996 (3) SCC 289** that *“if the description of the immovable property in a suit is not properly given or is wrongly described, a suit cannot be dismissed on that account inasmuch as the requirement of furnishing of description of immovable property which is the subject matter of a suit is mandatory only in mortgage suits but not in other suits”*.

Besides, the aforesaid position of law, it is also significant to mention here that under Order 7 Rule 11 CPC, a plaint cannot be rejected for wrong description of immovable property being the subject matter of a suit.

8. Thus the plea of the defendant petitioner herein that since the plaintiff respondent herein has given wrong description of the suit property in the plaint, as such, the plaint is liable to be rejected for having no cause of action cannot be said to be legally sustainable, more so the word “cause of action” for the purpose of Order 7 Rule 11 CPC has been held to mean every fact which if traversed would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. The Apex Court in case titled as **A.B.C. Laminart Pvt. Ltd. and another Vs. A. P. Agencies, Salem** reported in **1989 (2) SCC**

163 while dealing with the expression ‘cause of action’ has held that the cause of action is bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant and is not limited to actual infringement of right to sue on but includes all material facts on which it is founded. The Apex Court further in case titled as **Jageshwari Devi and others vs. Shatrughan Ram** reported as **2007 (15) SCC 52** has held that there is a distinction between “non disclosure of cause of action” and “non existence of cause of action”, and that non disclosure of cause of action in a plaint would fall within the ambit of Order 7 Rule 11 CPC and not the non existence of a cause of action.

9. Having regard to the facts and circumstances of the case noticed in the preceding paras inasmuch as the aforesaid position and principles of law, it is evident and manifest that the application filed by the defendant petitioner for rejection of the plaint is grossly misconceived having been rightly and properly considered and rejected by the trial court in terms of impugned order.
10. In view thereof, this Court is not inclined to interfere with the impugned order which accordingly is upheld.
11. Resultantly, **the petition is dismissed.**

(JAVED IQBAL WANI)
JUDGE

Jammu
28.08.2024
Sahil Padha

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