

(11) In the present case, the facts are undisputed that the parties are living separately and have entered into a Mubara'at agreement dated 15.06.2024, wherein they mutually agreed to dissolve the marriage, subject to the payment of Rs.30,00,000/- by the husband to the wife. It is also undisputed that the sum of Rs.30,00,000/- has been paid in full by the husband, and both the appellant and respondent have consented to the dissolution of the marriage. In light of these facts, this Court finds that no useful purpose would be served by remitting the matter back to the Family Court for further proceedings.

(12) Accordingly, the present appeal is **disposed of** in terms of the mutual agreement (*mubara'at*) dated 15.06.2024. The decree of divorce in terms of mutual agreement/consent dated 15.06.2024 is granted by declaring dissolution of the marriage between the parties. Let a decree be prepared accordingly.

(13) The judgment and order dated 04.07.2019 passed by the learned Principal Judge, Family Court, Lucknow, in Case No. 214 of 2019 is hereby set aside.

(14) The suit for the declaration of matrimonial status is decreed.

(15) The matrimonial status of the parties is declared as "divorced" under Muslim Personal Law and in accordance with their mutual agreement dated 15.06.2024.

(2024) 12 ILRA 58
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.12.2024

BEFORE

THE HON'BLE KSHITIJ SHAILENDRA, J.

First Appeal No. 136 of 2024

Naveen Chand Jain ...Appellant
Versus
Manav Sharma ...Respondent

Counsel for the Appellant:
Anjali Sinha, Rahul Sahai

Counsel for the Respondent:
Nipun Singh

A. Civil Law – Civil Procedure Code,1908 – Order VII - Rule 11 – Rejection of plaint – Cause of action – Relevance of its determination – Property was sold by the defendant making his status as stranger – Effect – Held, cause of action to claim injunction against a stranger is certainly recognized under the law and, therefore, the view taken by the trial court that after the defendant had sold the property, the plaintiff did not disclose a cause of action against him, is certainly erroneous – There exists no circumstance warranting rejection of plaint by invoking Order 7 Rule 11 (d) CPC at this stage and there can be adjudication of all the aspects after framing proper issues and holding full-fledged trial. (Para 15 and 23)

B. Civil Law – Specific Relief Act, 1963 – Section 41(h) – Injunction, grant of – Principle of equally efficacious remedy and its exception – Held, injunction cannot be granted when equally efficacious relief can be obtained by any other usual mode of proceeding, however, the exception carved out to the said provision is that it would not apply when there is a case of breach of trust. (Para 20)

First appeal allowed. (E-1)

List of Cases cited:

1. Balram Singh Vs Kelo Devi; 2022 SCC Online SC 1283

2. Church of Christ Charitable Trust & Educational Charitable Society Vs Ponniamman Educational Trust; (2012) 8 SCC 706

3. ABC Laminart (P) Ltd. Vs A.P. Agencies (1989) 2 SCC 163

4. Popat and Kotecha Property Vs St. Bank of India Staff Association; 2005 (61) ALR 457

(Delivered by Hon'ble Kshitij Shailendra, J.)

1. Supplementary affidavit filed today is taken on record.

2. Heard Sri Rahul Sahai, learned counsel for the plaintiff-appellant and Sri Anoop Trivedi, learned Senior Counsel, assisted by Sri Nipun Singh, learned counsel for the defendant-respondent.

3. Since the appeal arises out of rejection of plaint under Order 7 Rule 11 CPC, only plaint averments and some documents forming part of plaint are relevant for deciding the matter and, hence, with the consent of learned counsel for the parties, without summoning the record of trial court, the instant appeal is being finally decided as necessary material has been appended alongwith the stay application as well as supplementary affidavit filed today.

4. The plaintiff-appellant is aggrieved by the impugned order dated 10.11.2023, whereby learned Civil Judge (Senior Division)/ F.T.C., Muzaffar Nagar has rejected the plaint of Original Suit No.439 of 2018 (Naveen Chand Jain Vs. Manav Sharma) under Order 7 Rule 11 CPC. The said order amounts to "decree" under Section 2(2) CPC. Hence, this appeal under Section 96 CPC.

5. Brief facts giving rise to the instant appeal are that the plaintiff-

appellant filed the aforesaid suit claiming a decree for permanent prohibitory injunction restraining the defendant-respondent himself or through his agency from causing interference in running of petrol pump over the property in dispute and dispossessing him without following due process of law. The property in dispute was described as marked by alphabets 'A', 'B', 'F' 'E' in the plaint map.

6. The basis of the claim of the plaintiff-appellant was a lease granted by the defendant-respondent in favour of Hindustan Petroleum Corporation Limited (HPCL) and an agreement of dealership executed by the said Corporation in favour of the plaintiff-appellant on 29.09.2015. Certain averments regarding existence of initial agreement of the decade of 1960 and its renewal from time to time were also made in the plaint and the cause of action giving rise to the suit was alleged that whereas the appellant was running the petrol pump, the defendant was causing interference therein. Few averments regarding payment of a sum of Rs.60,00,000/- by the plaintiff to the defendant based upon some oral understanding to sell the property, were also made in the plaint.

7. The trial court has rejected the plaint recording few reasons, one of which is that since the defendant has sold the property by a registered sale deed, paper No.60-C/1 to 60-C/10 (annexed alongwith the supplementary affidavit filed today), he ceases to be owner of the property and, hence, there remains no cause of action against the defendant. Second reason is based upon Section 41(h) of the Specific Relief Act, 1963 that relief of specific performance of the agreement being an equally efficacious remedy, the same

having not been availed, the suit is barred and, hence, the plaint is liable to be rejected under Order 7 Rule 11 (d) CPC. Third reason is that the defendant was not a party to the agreement between the plaintiff-appellant and the HPCL and it is apparent from the plaint averments that there is no relationship between the plaintiff and the defendant.

8. Following points for determination arise for consideration in this appeal as per Order 41 Rule 31 CPC:-

"(a) Whether the plaint disclosed a cause of action ?

(b) Whether rejection of plaint by invoking Section 41(h) of the Specific Relief Act, 1963 and on account of defendant having lost title to the property is justified ?"

9. Assailing the order impugned, Sri Rahul Sahai submits that the plaint averments clearly establish a triable case, inasmuch as not only a sum of Rs.60,00,000/- was paid by the appellant to the respondent, continuous running of petrol pump for the last about 60 years was alleged and, therefore, injunction against unlawful interference was rightly claimed. As regards the sale of the property, it is contended that the suit was filed in the year 2018, whereas the property was sold by the defendant in the year 2020 and when the defendant did not remain owner of the property, this circumstance cannot go against the plaintiff-appellant, rather the plaintiff was entitled to claim injunction against the defendant, who has now become a stranger to the property.

10. Per contra, Sri Anoop Trivedi, learned Senior Counsel submits that as only an oral agreement for sale was alleged in

the plaint and on the basis thereof, no decree for specific performance can be granted, once the plaintiff cannot get any relief based upon alleged oral understanding or alleged oral agreement, he cannot claim injunction. Further submission is that the plaint contained inconsistent pleas and whereas at some places some privity of contract between the plaintiff and Ved Prakash (non- party) was alleged and at some other places, lapse of agreement and, even thereafter, continuity in alleged tenancy rights was pleaded. As far as the relationship between the plaintiff and defendant is concerned, since no cause of action arose to claim the relief against the defendant, the trial court was justified in rejecting the plaint both under Order 7 Rule 11 (a) and Rule and 11 (d) CPC. In support of his submissions, he has placed reliance upon judgment of Supreme Court in **Balram Singh Vs. Kelo Devi: 2022 SCC Online SC 1283**.

11. Having heard the learned counsel for the parties, while dealing with **first** point of determination, the Court has to read the entire plaint so as to understand as to whether bare statement contained in the plaint gives rise to cause of action for filing the suit. The entire plaint raises different pleas, one based upon agreement between the defendant and HPCL, the other is based upon relationship between such HPCL and the plaintiff arising out of contract/ agreement regarding running of petrol pump, third, between the plaintiff and non-party Ved Prakash in respect of expiry of lease granted qua part of the property for a period of 15years, fourth, some oral understanding of sale of the property between parties to suit and transfer of a sum of Rs.60,00,000/- through R.T.G.S. by the plaintiff in the account of the defendant and fifth, continued tenancy even after non-

execution of the fresh agreement of tenancy between the plaintiff and Ved Prakash.

12. These questions certainly require adjudication during the course of trial and at least, at this stage, there is no dispute between the parties that the appellant is in possession over the property in dispute and is running a petrol pump. The cause of action alleged in paragraph no.27 of the plaint is that the defendant was, despite transferring the property of service station, is causing interference in running of the petrol pump by somehow impressing the authorities of the HPCL and threatening to get the supply of fuel stopped and also to dispossess the appellant.

13. The Supreme Court, in **Church of Christ Charitable Trust & Educational Charitable Society [Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706]**, has observed and held as under:

“13. While scrutinising the plaint averments, it is the bounden duty of the trial court to ascertain the materials for cause of action. **The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words “cause of action”.** A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.”

14. In **ABC Laminart (P) Ltd. v. A.P. Agencies [(1989) 2 SCC 163]**, the Supreme

Court explained the meaning of “cause of action” as follows:

“12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.”

15. In view of the contents of plaint in the present case, even if the property was sold by the defendant prior to institution of the suit or even *lis pendens*, vide paper No.60-C, in both the cases his status would become as that of stranger to the property, although, earlier, he might have been owner either of the entire property or a part thereof. Cause of action to claim injunction against a stranger is certainly recognized under the law and, therefore, the view taken by the trial court that after the defendant had sold the property, the plaint did not disclose a cause of action against him, is certainly erroneous.

16. First point for determination is, accordingly, decided in favour of the

appellant holding that the plaint disclosed a cause of action and, hence, the rejection of plaint by invoking Order 7 Rule 11 (a) CPC was not justified.

17. As regards **second** point for determination, the Court has to examine whether the bar contained under Section 41 (h) of the Specific Relief Act, 1963 can be invoked at this stage of proceedings. There is no dispute about the fact that there is no written agreement for sale executed between the parties and the statement of plaint is that there was some oral understanding for selling the property in between the plaintiff and defendant in connection where to, a sum of Rs.60,00,000/- was transferred by the plaintiff in the bank account of the defendant. Whether any amount was paid or not paid is a question of trial and, at this stage, no observation can be made in that regard.

18. As far as claim for injunction based upon an oral agreement is concerned, reliance placed by Sri Trivedi on the judgment of **Balram (supra)** needs to be examined in the facts of the present case. The case of **Balram (supra)** had arisen out of a suit for injunction based upon only an unregistered agreement to sell dated 23.03.1996. The Supreme Court held that since the plaintiff might not succeed in getting the relief of specific performance of such agreement to sell as the same was unregistered, he had filed a suit simplicitor for permanent injunction only. The Supreme Court also observed that it may be true that in a given case, an unregistered document can be used and/or considered for collateral purpose, however, at the same time, the plaintiff cannot get the relief indirectly which he otherwise cannot get in a suit for substantive relief.

19. The said judgment, with great respect, would not apply in the facts of the present case for certain reasons. First, that there is no written unregistered agreement for sale between the parties. Secondly, the relief of injunction claimed in the instant case is not solely dependent upon the oral understanding for sale, rather it is based upon many other averments like transfer of a sum of Rs.60,00,000/- in the account of the defendant by the plaintiff through R.T.G.S. mode, loss of title vested in the defendant after the property was sold, privity of contract between the plaintiff and HPCL that had granted an agreement for running a petrol pump, which has not been discontinued by any action of the Petrol Corporation, 6 decades old possession etc. Under such circumstances, even if the bar under Section 41(h) is examined, it may be a case where the plaintiff's case may fall under the **exceptional clause** contained in sub-section (h). For a ready reference, Section 41(h) of the Specific Relief Act, 1963 is quoted as under:-

"41. (h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding **except in case of breach of trust**"

20. A bare perusal of the aforequoted provision shows that injunction cannot be granted when equally efficacious relief can be obtained by any other usual mode of proceeding, however, the exception carved out to the said provision is that it would not apply when there is a case of breach of trust.

21. The Supreme Court in **Popat and Kotecha Property Vs. State Bank of India Staff Association: 2005 (61) ALR 457**, in paragraph no.13 of the report, has held as under:-

“13. 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 or 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.”

22. In the facts of the present, transfer of a sum of Rs.60,00,000/- by the plaintiff to the defendant is a question to be tried in the suit. Further, long continuance of petrol pump over the land which was earlier owned by the defendant is a matter which may give rise to element of acquiescence on the part of the defendant as regards running of the petrol pump on the land owned by him, whether in lieu of exchange of money or otherwise in the nature of permissive possession etc. When the plaint averments speak transfer of property by the defendant, his status becomes that of a stranger and, under such circumstances, equally efficacious remedy concept does not directly apply, inasmuch as the cause of action is not directly correlated to the grievance of the appellant to sell the property to the appellant nor is there any challenge to the sale made by the defendant to any third party. The entire plaint case is

based upon unwarranted interference by the defendant-respondent in the plaintiff-appellant's right to run the petrol pump.

23. In the facts of the case, there exists no circumstance warranting rejection of plaint by invoking Order 7 Rule 11 (d) CPC at this stage and there can be adjudication of all the aspects after framing proper issues and holding full fledged trial. Even impleadment of third party or amendment of plaint based upon given facts or subsequent developments may be an aspect and, therefore, rejection of plaint at this stage by invoking Order 7 Rule 11 (d) CPC is not justified. **Second** point for determination is also decided accordingly.

24. In view of the above discussion, this Court is satisfied that the plaint could not be rejected under Order 7 Rule 11 CPC and, hence, the impugned order is not sustainable.

25. The appeal is **allowed**.

26. The impugned judgment and order dated 10.11.2023 passed by the learned Civil Judge (Senior Division)/ F.T.C., Muzaffar Nagar in Original Suit No.439 of 2018 (Naveen Chand Jain Vs. Manav Sharma) is **set aside**.

27. The suit stands revived to its original number and same status that existed on the date when the plaint was rejected.

28. The trial court is directed to proceed with the suit and it shall decide the same expeditiously by the **end of year 2025**.

29. It is made clear that the instant appeal has been decided only examining the rejection of plaint under Order 7 Rule

