

petitioner would be deemed to be the owner of the property in question. The aforesaid mutation proceedings would be carried out within 30 days from the date of production of certified copy of this order.

(2024) 10 ILRA 345
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 03.10.2024

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Matter Under Article 227 No. 4747 of 2024

Santram ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Rohit Kumar Singh, Akhilendra Kumar Goswami,
 Harshit Singh, Shweta Mishra

Counsel for the Respondents:

C.S.C., Pankaj Gupta, Pradeep Kumar Shukla

Civil Law - Code of Civil Procedure, 1908 - Order VII, Rule 11 C.P.C. - Rejection of plaint - A plaint can be rejected under Order VII, Rule 11 (a) C.P.C. where it does not disclose any cause of action. Under Order VII, Rule 11 (d) C.P.C., a plaint can be rejected where the suit appears "from the statement in the plaint" to be barred by any law. For rejecting a plaint under the aforesaid provisions, only the statements made in the plaint have to be examined. Statement in defence cannot be considered for deciding an application under Order VII, Rule 11 C.P.C. Plea regarding concealment of fact, discrepancy in the description of boundaries of the property, or necessary or proper party is not to be decided while deciding an application under Order VII, Rule 11 C.P.C. If any fact has been concealed, it can be brought to the court's notice by the defendants by filing a written statement and presenting

evidence in support thereof, and the same can be adjudicated at the appropriate stage. It will not give rise to rejection of the plaint under Order VII, Rule 11 C.P.C. A mere discrepancy in the description of boundaries of the property in dispute, as given in the plaint and in the site plan, does not attract any of the clauses of Order VII, Rule 11 C.P.C. for rejection of the plaint. Plea that the Gaon Sabha is a necessary or proper party can be raised before the learned Trial court at the appropriate stage and need not be examined while deciding an application under Order VII, Rule 11 C.P.C. In the instant case, plaintiffs stated that they have purchased the suit property through a registered sale deed and that the defendant is creating hindrance in the enjoyment of the property. Court held that the plaint discloses a cause of action and cannot be rejected under Order VII, Rule 11 C.P.C. (Para 13, 14, 15)

Dismissed. (E-5)

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Ahilendra Kumar Goswami, the learned counsel for the petitioner, Sri Atul Kumar Mishra, the learned counsel for the State, Sri Pankaj Gupta, the learned counsel for the opposite party no.2/Gaon Sabha, Sri Indrajeet Shukla, the learned counsel for the opposite parties no.3 to 7 and perused the records.

2. By means of the instant petition under Article 227 of the Constitution of India the petitioner has challenged the validity of an order dated 09.12.2022, passed in Regular Suit No.1481 of 2003 by the learned Civil Judge, Junior Division/FTC-II, Gonda, whereby the petitioner's application under Order VII, Rule 11 C.P.C. for rejection of plaint has been rejected. The petitioner has also challenged the validity of a judgment and

order dated 04.09.2024, passed in Revision No.16 of 2023 by the learned Additional District Judge/F.T.C.-II, Gonda, whereby the revision has been dismissed and the order dated 09.12.2022, passed by the learned Civil Judge has been affirmed.

3. The opposite parties have filed the aforesaid suit for declaration and perpetual injunction claiming that they have purchased the property in dispute through a registered sale deed and the petitioner is creating hindrance in their enjoyment of the property in dispute.

4. The petitioner has filed a written statement in the suit and thereafter he filed an application under Order VII, Rule 11 C.P.C. for rejection of the plaint. The opposite parties have stated that the plaint does not disclose the title of the plaintiffs, the pleadings are incomplete and misleading and it has been filed without seeking permission of the court and under a conspiracy. Therefore, the plaint is liable to be rejected. The application was not supported by any affidavit.

5. The learned trial court found that in para 5 of the plaint the plaintiffs have submitted that the defendant is disputing the title of the plaintiffs and therefore a cause of action has accrued. Accordingly, the trial court rejected the application under Order VII, Rule 11 C.P.C.

6. In revision, the learned Additional District Judge also found that there is no ground for rejection of the plaint under Order VII, Rule 11 (a) (d) C.P.C. and there is no illegality in the order passed by the learned trial court.

7. Assailing the validity of the aforesaid orders, the learned counsel for the

petitioner has submitted that there are major concealment of facts in the plaint. He submitted that there is some discrepancy in the boundaries of the land in dispute given in the plaint and those given in the site plan forming a part of the plaint.

8. The learned counsel for the petitioner lastly submitted that the dispute between the parties has already stands finally decided by a previous decree, which has been concealed while filing the suit.

9. Order VII, Rule 11 C.P.C. provides as follows:

"O.7. R.11. Rejection of plaint. -The plaint shall be rejected in the following cases:-

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

(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)where the relief claimed is properly valued, but the plaint is returned 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, fails 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;] [Inserted by the Code of Civil Procedure (Amendment) Act, 1999, Section 17 (w.e.f. 1.7.2002).]

(f)[where the plaintiff fails to comply with the provisions of

rule 9:] [Substituted by the Code of Civil Procedure (Amendment) Act, 2002, Section 8, for sub-Clauses (f) and (g)(w.e.f. 1.7.2002)(as inserted by the Code of Civil Procedure (Amendment) Act, 1999, Section 17 (w.e.f. 1.7.2002).]

[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 from 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 grave injustice to the plaintiff.] [Added by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).]"

10. A plaint can be rejected under Order VII, Rule 11 (a) C.P.C. where it does not disclose any cause of action. Under Order VII, Rule 11 (d) C.P.C. a plaint can be rejected where the suit appears from the statement in the plaint to be barred by any law. The plaintiffs have stated that they have purchased the suit property through a registered sale deed and that the defendant is creating hindrance in enjoyment of the property. Therefore, the plaint discloses a cause of action and it cannot be rejected under Order VII, Rule 11 C.P.C.

11. Under Order VII, Rule 11 (d) C.P.C. a plaint can be rejected where the suit appears "from the statement in the plaint" to be barred by any law. For

rejecting a plaint under the aforesaid provisions merely statements made in the plaint have to be examined. The statement in defence cannot be examined for deciding an application under Order VII, Rule 11 C.P.C.

12. A mere discrepancy in the description of boundaries of the property in dispute given in the plaint and in the site plan, does not attract any of the clauses of Order VII, Rule 11 C.P.C. for rejection of plaint. Concealment of fact regarding any previous decree is also not a ground as while deciding an application under Order VII, Rule 11 C.P.C. the court is merely required to examine the averments made in the plaint itself.

13. In case any fact has been concealed, that can be brought to the court's notice by the defendants by filing a written statement and giving an evidence in support thereof, which will be decided at the appropriate stage. It will not give rise for rejection of the plaint under Order VII, Rule 11 C.P.C.

14. Although, it is stated in the application that the suit has wrongly been filed without seeking permission of the court, the learned counsel for the petitioner could not point out any provision of law under which the plaintiff was required to obtain leave of the court before filing a suit for declaration and permanent injunction.

15. The learned counsel for the petitioner has also submitted that gaon sabha has not been impleaded as a party in the suit. From the pleadings contained in the plaint it does not appear that the gaon sabha is a necessary party to the suit. In case the gaon sabha is a necessary or proper party, this plea can be raised before

the learned trial court at the appropriate stage and this plea is also not required to be examined while deciding an application under Order VII, Rule 11 C.P.C.

16. In view of the aforesaid discussions, this court is of the considered view that there is no illegality in the impugned orders dated 09.12.2022 and 04.09.2024. The petition lacks merit and the same is accordingly dismissed.

(2024) 10 ILRA 348
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 04.10.2024

BEFORE

THE HON'BLE SAURABH LAVANIA, J.

Application U/S 482 Nos. 5413 of 2024 & 2283 of 2023

Jagdish Singh @ Jagdish Kumar Singh
...Applicant

Versus

State of U.P. & Anr. ...Respondents

Counsel for the Applicant:

Abhishek Singh, Gautam Singh Yadav

Counsel for the Respondents:

G.A.

Departmental proceedings and Criminal Proceedings-Four persons violated the lockdown guidelines and abused and assaulted the police personnel-FIR lodged-disciplinary proceeding also initiated- if an accused has been exonerated and held innocent in the disciplinary proceedings –then the criminal prosecution premised on the same/identical set of allegations cannot be permitted to continue-criminal proceedings set aside.

Application allowed. (E-9)

List of Cases cited:

1. P.S. Rajya Vs St. of Bihar, 1996 (9) SCC 1

2. Lokesh Kumar Jain Vs St. of Raj. (2013) 11 SCC 130

3. Radheshyam Kejriwal Vs St. of W.B. & anr.(2011) 3 SCC 581

4. Ashoo Surendranath Tewai (Supra) Vs Deputy Superintendent of Police, EOW, CBI & anr., reported in (2020) 9 SCC 636

5. J. Sekar @ Sekar Reddy Vs Directorate of Enforcement, reported in (2022) 7 SCC 370

(Delivered by Hon'ble Saurabh Lavania, J.)

1. Subject matter of both the application(s) filed by the applicant namely Jagdish Singh @ Jagdish Kumar Singh relates to Case Crime/FIR No. 0271 of 2020, under Section 323, 504, 506, 307, 332, 353, 188, 270 IPC, P.S.- Kakori, District-Lucknow and as such the same are being decided by means of this common order/judgment.

2. Heard learned counsel for the applicant and Shri S.P. Tiwari, learned AGA for the State and perused the record.

3. APPLICATION U/S 482 No. 5413 of 2024 has been filed seeking following main relief:

"to set aside the impugned order dated 04.06.2024 passed by Learned Court Additional District and Session Judge, Court No. 21, Lucknow in the Session Case No. 1907 of 2023 bearing title "State of U.P. Vs Anoop Kumar Gupta & Others" arising out of charge sheet bearing No 01 dated 14.07.2020 submitted in F.I.R. No. 0271/2020, Under Section 323/504/506/307/332/353/188/270