

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6760 OF 2019

(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 9233 OF 2017)

COLONEL SHRAWAN KUMAR JAIPURIYAR
@ SARWAN KUMAR JAIPURIYAR APPLICANT(S)

VERSUS

KRISHNA NANDAN SINGH AND ANOTHERRESPONDENT(S)

ORDER

Leave granted.

2. In spite of second call, there is no appearance on behalf of Krishna Nandan Singh, the plaintiff, the first respondent before us.
3. The first respondent has filed a civil suit T.S. No. 97/16 against Sarwan Kumar Jaipuriyar, the appellant before us and Anil Kumar, the second respondent before us. The second respondent is the brother of the first respondent.
4. The plaint admits that there was amicable division and partition of property bearing Holding no. 163 old Holding no. 42, Ward No. 10 (New) 7 (Old), Mahal No.1, Mohalla- Mainpura, P.S. Danapur, Patna amongst

respondent no.1, respondent no.2 and their brother Sunil Kumar Mehta. This partition was evidenced by recording Memorandum of Partition dated 04.12.2008, which was signed and executed by the three brothers.

5. The factum of partition and the partition deed itself is not challenged and questioned in the civil suit preferred by the first respondent. In fact, Sunil Kumar Mehta, the third brother is not even a party to the suit. The suit also acknowledges that the second respondent was allotted and became the owner of south-eastern part of the aforesaid holding whereas the first respondent stands recorded as the owner of another portion and that the first respondent and second respondent have been paying taxes for the respective portions to Nagar Parishad under receipts.
6. The grievance and the cause of action as pleaded in the civil suit by the first respondent is that the second respondent had sold the portion allotted to him on partition to the appellant vide registered sale deed dated 25.01.2016. This sale deed, it is claimed, is *void ab initio* and inoperative as there is every chance that the privacy of the first respondent's family would be affected and destroyed. It is pleaded that the first respondent has got a right and authority to repurchase the

portion allotted to the second respondent under the partition evidenced by the Memorandum of Partition dated 04.12.2008.

7. The Memorandum of Partition dated 04.12.2008 which is placed on record and an accepted/admitted document does not give any right of pre-emption to the first respondent. There is also no pleading to the said effect in the plaint. As the partition and the Memorandum of Partition are not denied or challenged, ownership of the second respondent and his right to sell the property in terms of the Memorandum of Partition are and would be undisputed legal rights under the Transfer of Property Act, 1882. There was no restraint to exercise of this right vested with the second respondent by contract or under any statute. This is not alleged and adverted to in the plaint. It is also an undisputed position that Sunil Kumar Mehta who was on partition allotted the third portion of the property, has sold and transferred his portion to a third party vide registered sale deed dated 15.10.2009. The said sale deed is not under challenge and was not questioned by the first respondent.
8. The aforesaid factual and legal position being admitted and accepted in the plaint, we fail to understand how and on what basis, the first respondent claims right of pre-emption or repurchase of the portion that was allotted to the second respondent in terms of amicable division as evidenced by Memorandum of Partition dated 04.12.2008. On the

aforesaid partition, the second respondent became the sole and exclusive owner of the portion allotted to him, a legal position, which is not even controverted and denied by the first respondent in the plaint.

9. In the aforesaid background, it is to be held that the plaint does not disclose any cause of action for the relief prayed, that is, a direction to the second respondent to execute and register a sale deed in favour of the first respondent and to put the first respondent in possession. There does not exist any legal right which the plaintiff or the first respondent is entitled to invoke and enforce. For a right to exist, there must be a correlative duty which can be enforced in a law suit. A right cannot exist without an enforceable duty. Ownership means a bundle of rights which would normally include the right to exclude and transfer the property in a manner one wants, subject to contractual obligations as agreed or statutory restrictions imposed on the owner. In the present case, the pleadings fail to establish violation of a statutory right or breach of a contractual obligation which creates an enforceable right in the court of law. In the absence of any such right or even a claim, the plaint would not disclose cause of action.

10. This Court in ***Church of Christ Charitable Trust and Educational Society Represented by its Chairman v. Ponniamman Educational***

Trust Represented by its Chairman/ Managing Trustee¹ has referred to the earlier judgment of this Court in **A.B.C. Laminart Pvt. Ltd. and Another v. A.P. Agencies, Salem**² to explain that the cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to seek a decree and relief against the defendant. Cause of action requires infringement of the right or breach of an obligation and comprises of all material facts on which the right and claim for breach is founded, that is, some act done by the defendant to infringe and violate the right or breach an obligation. In **T. Arivandanam v. T.V. Satyapal and Another**³ this Court has held that if the plaint is manifestly vexatious, meritless and groundless, in the sense that it does not disclose a clear right to sue, it would be right and proper to exercise power under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('Code', for short). A mere contemplation or possibility that a right may be infringed without any legitimate basis for that right, would not be sufficient to hold that the plaint discloses a cause of action.

11. In view of the aforesaid discussion, we would allow the present appeal and set aside the impugned order. The application under Order VII Rule 11 of the Code filed by the appellant is allowed and the plaint preferred

¹ (2012) 8 SCC 706

² (1989) 2 SCC 163

³ (1977) 4 SCC 467

by the first respondent is rejected as it discloses no cause of action.

There shall be no order as to costs.

....., J.
(MOHAN M. SHANTANAGOUDAR)

....., J.
(SANJIV KHANNA)

**NEW DELHI;
SEPTEMBER 02, 2019.**

ITEM NO.32

COURT NO.10

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 9233/2017

(Arising out of impugned final judgment and order dated 30-01-2017
in CMJC No. 159/2017 passed by the High Court Of Judicature At
Patna)

COLONEL SHRAWAN KUMAR JAIPURIYAR
@ SARWAN KUMAR JAIPURIYAR

Petitioner(s)

VERSUS

KRISHNA NANDAN SINGH & ANR.

Respondent(s)

Date : 02-09-2019 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR
HON'BLE MR. JUSTICE SANJIV KHANNA

For Petitioner(s) Mr. Vivek Singh, AOR

For Respondent(s) Mr. Ashutosh Jha, AOR

Mr. Somanatha Padhan, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

In spite of second call, there is no appearance on behalf of
Krishna Nandan Singh, the plaintiff, the first respondent before
us.

The appeal is allowed in terms of the signed order.

(GULSHAN KUMAR ARORA)
COURT MASTER

(R.S. NARAYANAN)
COURT MASTER

(Signed order is placed on the file)