

**Narendra Kumar Jain and Another Vs. Sukumar Chand Jain and Others**

**Narendra Kumar Jain and Another Vs. Sukumar Chand Jain and Others**

**SooperKanoon Citation :** [sooperkanoon.com/447359](http://sooperkanoon.com/447359)

**Court :** Allahabad

**Decided On :** Apr-16-1993

**Reported in :** AIR1994All1

**Judge :** M.L. Bhat, J.

**Acts :** Religious Endowment Act, 1863 - Sections 14 and 18; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 92 - Order 1, Rule 10 - Order 2, Rule 2, 2(2) and (3) - Order 6, Rule 2 - Order 7, Rule 11; Representation of People Act - Sections 83

**Appeal No. :** First Appeal No. 145 of 1992

**Appellant :** Narendra Kumar Jain and Another

**Respondent :** Sukumar Chand Jain and Others

**Advocate for Def. :** Standing Counsel

**Advocate for Pet/Ap. :** Rajendra Kumar, Adv.

**Judgement :**

1. This is a Civil First Appeal against the judgment of the III Addl.District Judge, Meerut dated 28-1-1992 whereby Court below was allowed the application filed by the defendant-respondents under O. 7, R. 11, C.P.C. and has rejected the plaint under the said order. The plaintiff-appellants are aggrieved against the said order

and they seek setting aside of the said order through the medium of this appeal.

2. To appreciate the controversy and for the just disposal of this appeal it is necessary to give a brief history of the case as emerge from the pleadings of the parties before the Court below.

3. The plaintiff-appellants seem to have made an application under S. 18 of the Religious Endowments Act of 1863, hereinafter called as 'the Act', for permission to file a suit under S. 14 of the said Act. The permission was granted to the appellants to file the suit by a written order dated 24-7-1991 by the District Judge. As a result of this order the plaintiff-appellants had filed the suit against the respondents before the Court below under S. 14 of the Act. The written statement was filed by the answering defendants to the suit. The suit is in relation to a temple and its property situate at Meerut. For the management of the said temple and its property the decision of the Jain Biradar is final and supreme. Such decision is implemented strictly to protect the interest of the Jain Samaj. It is stated in the plaint that the ancestors of Jain Biradari were guided by a resolution adopted by the Jain Panchayat in the year 1901 A.D. In annual meet the Jain Biradari use to check the management, accounts etc.' of the said temple and after every three years a new committee of management from among the Jain Biradari was elected for the management of the temple and its property. The elected body is said to be answerable to the general body, which is called Jain Biradari Panchayat.

4. It is alleged in paras 7 onwards of the plaint that a few years back the defendants illegally inducted themselves in the self-styled committee of management of the temple and by violating the customs and rites began to propagate that their superintendence in the management of the said religious establish-ment is permanent and they were not removable. They formed a committee consisting of 41 office bearers known as 'Intzamia Committee' which included their relatives. The defendants are said to have played main role in the misappropriation of funds of the said religious establishment and have kept the Jain Biradari in dark about the income of the institution. Despite demand being made by the Jain Biradari for rendering the accounts, the defendants have not rendered the accounts and have caused great financial loss to the institution by

removing its funds and movable property. The defendants are said to have indulged in anti-religious activities and have colluded with a different sect of 'Kanjaitis', who are said to be followers of Kanji Swami. Under their influence the defendants tried to transfer huge property of the institution. The 'Kanjaitis' are said to have organised a camp in the premises of the temple between 21st May, 1988 to 5th June, 1988.

5. Apart from the defendants, the plaint alleges, a few persons named in para 11 of the plaint have played the main role in the self-styled committee of the defendants. On 21-5-1988 the Jain Biradari is said to have assembled in connection with the function of 'Shanti Vidhan'. They were annoyed with the anti-religious activities of the defendants and they passed a resolution removing the defendants and their self-styled committee from the management of the temple and in their place elected a new committee for the management of the temple. This arrangement was made till the next election was held, which was due to be held in November, 1988. The newly elected committee was said to have been formed, whose members are given in Annexure 1 to the plaint. They are 24 in number. The defendants did not obey the decision of the Jain Panchayat and retained the records/ charge of the managing committee with a mala fide intention and with a view to keep themselves in charge of the establishment and continue their misfeasance and anti-religious activities. One of the defendants, who is an Advocate, is said to have filed a suit, being suit No. 796 of 1988 on behalf of the Intzamia Committee in the Court of the Civil Judge, Meerut for permanent stay restraining the members of newly formed committee to form any committee. The said suit is said to have been filed by the defendant No. 3 as Secretary of the self-styled Intzamia Committee on 30-5-1988 in his individual capacity. That suit is said to be without jurisdiction and has been filed without any permission under S. 18 of the Act. It is alleged that the defendants and their so-called committee has no legal status to remain in office and to keep the records and accounts etc. of the temple. They are said to have grabbed movable property worth several lacs. Therefore, the plaintiffs seek a declaration that the newly elected committee as shown in Annexure I to the plain be appointed as trustees and the defendants be directed to hand over the charge/cash etc. of the temple along with the accounts of the trust for the last 30 years. It is alleged that in the year 1907 the Court was pleased to

appoint 36 trustees for this religious trust under the similar circumstances and conditions, but those trustees have expired. The plaintiffs are said to be keenly interested in the affairs of the temple. In para 19 of the plaint the plaintiffs have stated that the cause of action for filing the suit arose firstly when the defendants inducted themselves illegally in the management of the said temple and for their vested interest formed a committee of their relations and close friends in violation of the customs and rites of the Jain Samaj. It is further stated that the cause of action arose also from the time when the defendants and the members of their alleged committee misappropriated and mismanaged the affairs of the Jain Biradari trust and started anti-religious activities by allowing the temple property to pass on in the hands of 'Kanjaitis' and thirdly when the Jain Biradari removed the defendants and formed a new committee and the defendants did not obey the verdict of the Jain Biradari and did not hand over the charge to the newly elected committee, which consists of the plaintiffs. On the aforesaid cause of action the plaintiffs have claimed the following reliefs.

(a) That for the management of the movable property and cash etc. belonging to the temple in question the persons named in Annexure 1 to the plaint or those whom the Court deem respectable and proper persons be appointed as new trustees and the present superintendents may be removed;

(b) That the entire property and money in cash belonging to the temple be taken out from the defendants' possession and be caused to be put in possession of the newly elected trustees and the defendants Nos. 1 to 4 be directed to render the accounts of the religious trust in question for the last 30 years and the amount which may be found due to the temple may be caused to be handed over to the new trustees;

(c) That the new trustees be authorised to obtain possession of the entire property and to realise the entire trust money of the temple and to frame rules in respect of the management of the trust property; and

(d) Such direction as may be deemed proper and necessary for the said temple and trust may be passed.

6. A written statement was filed to the suit by the defendants. The allegations in the plaint are denied. The defendants have denied the existence of Jain Panchayat or its control and supervision over the temple and its property. They have also denied that the committee of management is elected after every three years. It is also denied that the plaintiffs were ever asked by the Jain Biradari to manage the property. The allegations regarding grabbing or misappropriating the property are denied. They have also denied the anti-religious activities levelled against them. It is also denied that any camp was organised in the premises of the temple. However, it is stated that there is no bar for allowing 'Kanjaitis' to hold their camp in the premises of the temple. It is also stated that no member is a dummy member. The suit No. 796 of 1988 is said to have been filed by the Managing Committee against some mischief mongers and the plaintiffs, who wanted to interfere in the management of the temple. It is stated that the Civil Court had jurisdiction to entertain that suit.

7. In additional pleas of the written statement it is stated that the purpose of the present suit is to take the management of the temple from the defendants and to hand over the same to the persons mentioned in Annexure 1 to the plaint, which is said to be beyond the scope of S. 92, C.P.C. The suit is said to be not maintainable. The suit is said to be bad for non-joinder of parties. All the 41 members of the managing committee have not been made parties. They are said to be necessary parties to the suit. Only four of them have been made parties to the suit. In para 23 of the written statement description of the temple in question is given. The Intzamia Committee is a society registered under the Societies Registration Act. It was registered/ in the year 1906. The renewal of the society takes place after every five years. The Committee has its own Constitution and is governed by the same. The Committee is a permanent body. It is neither dissolved nor elections ever take place. The elections take place only to fill up the vacancies in the committee if any such vacancy is occurred due to death or resignation or otherwise. The Intzamia Committee consists of at least 21 members or maximum 41 members. Office bearers of the committee are elected after three years. The office bearers of the committee are named in para 29 of the written statement. The 'Kanjaitis' are said to be Digambar Jains. In the year 1981 the 'Kanjaitis' obtained permission from defendant No. 1 to organise a camp in the temple premises.

Subsequently they changed the place of the camp to Mawana. However, they could organise such a camp in the temple premises. They are said to be in actual physical control and possession of the temple as they are members of the Intzamia Committee of the temple. The plaintiffs are said to have indulged in hooliganism on 21-5-1988 along with their supporters numbering 100. The law and order enforcing agencies removed the plaintiffs and their supporters from the temple. It was in this context that a civil suit was filed against the plaintiffs and their supporters. The persons named in Annexure 1 to the plaint cannot be given charge of the temple of property.

8. Thereafter the defendants seem to have filed an application purported to be under O. 7, R. II, C.P.C. for rejection of the plaint. It was stated in this application that the reliefs claimed by the plaintiffs cannot be granted to them under S. 14 of the Act. The defendants have been sued in their personal capacities. They are neither trustees nor manager nor superintendent nor members of such committee, which was appointed under the Act. The temple and its property are governed by a duly constituted committee of 41 members including the defendants. The rest of the defendants have not been impleaded as parties to the suit. Since the plaintiffs do not disclose any cause of action against the defendants as contemplated under S. 14 of the Act, so it is liable to be rejected under O. 7, R. 11, C.P.C. The plaintiffs seem to have filed objection to this application. Thereupon this application was allowed by the Court below holding that none of the reliefs can be claimed under S. 14 of the Act nor can any such relief be granted under the Act. Therefore, the plaintiffs have no cause of action to file the suit, and allowing the application filed by the defendants the plaint was rejected under O. 7, R. II, C.P.C.

9. For instituting a suit under S. 14 of the Act it is necessary to obtain leave of the Court under S. 18 of the Act. As stated above, the leave was obtained by the plaintiffs in accordance with S. 18 of the Act.

10. S. 14 of the Act reads as under:

'14. Persons interested may singly sue in case of breach of trust, etc.-- Any person or persons interested in any mosque, temple or religious establishment, or in the performance of the worship or of the service thereof, or the trusts relating thereto,

may, without joining as plaintiff any of the other persons interested therein, sue before the Civil Court the trustee, manager or superintendent of such mosque, temple or religious establishment or the member of any committee appointed under this Act, for any misfeasance, breach of trust or neglect of duty, committed by such trustee, manager, superintendent or member of such committee, in respect of the trusts vested in, or confided to, them respectively;

and the Civil Court may direct the specific performance of any act by such trustee, manager, superintendent or member of a committee,

and may decree damages and costs against such trustee, manager, superintendent or member of a committee,

and may also direct the removal of such trustee, manager, superintendent or member of a committee.'

11. From the critical analysis of the provisions of S. 14 of the Act it would appear that any person or persons interested in any mosque, temple or religious establishment may sue before the Civil Court the trustee, manager or superintendent of such religious institution or the member of any committee appointed under this Act for misfeasance, breach of trust or neglect of duty and on filing such suit the Civil Court is empowered to make a direction for specific performance of any act by such trustee, manager, superintendent or member of a committee. It can pass a decree for damages and costs against such trustee, manager, superintendent or member of a committee or may direct the removal of such trustee, manager, superintendent or member of a committee.

12. The reliefs claimed in the plaint could not be granted by the Court below, therefore, it was contended that the plaintiffs had no cause of action to file the suit. S. 14 of the Act does not postulate to pass a decree for any relief which is claimed in the suit. Therefore, it is urged that the plaint is liable to be rejected under O. 7, R.I 1, C.P.C.

13. O.7, R. 11, C.P.C. makes a provision for rejection of a plaint and reads as under:

'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) 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 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, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law. (provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers 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-papers, 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'

14. The learned counsel for the respondents has submitted that sub-clause (a) of R. 11 of O. 7 would be applicable in the present case and under this sub-clause the plaint could be rejected and the trial Court's judgment is sought to be justified on the terms of the said sub-clause. It was further contended that the defendants were termed as usurpers and not as trustees, managers or superintendents in the plaint, therefore, the suit under S. 14 of the Act could not be instituted. The said section does not allow institution of a suit against a stranger or a trespasser. The plaintiffs do not admit the defendants as the managers or trustees or superintendents. Therefore, S. 14 of the Act could not be invoked by the plaintiffs.

15. It is true that a plaint under O. 7, R. 11(a), C.P.C. can be rejected if it does not disclose the cause of action. The cause of action to institute a suit is judged by the trial Court from the reliefs which are sought. According to the trial Court the reliefs prayed in the plaint cannot be granted, therefore, there is no cause of action

available to the plaintiffs to file the suit. The trial Court has also relied on the assertion of the plaintiffs in respect of the defendants' character in the plaint and on that basis also it says that the suit under S. 14 of the Act would not lie. In the opinion of the trial Court the plaintiffs could bring a suit under S. 92 of the C.P.C. which empowers a Court to remove any trustee, appoint a new trustee, vest the property of an institution in a trustee, direct a trustee to deliver possession of any trust property to the person entitled to get its possession, direct taking of accounts or enquires etc. etc. The reliefs under S. 14 of the Act, as claimed in the plaint, could not be granted by the Court, therefore, in the opinion of the Court below the plaint is liable to be rejected for it does not disclose the cause of action.

16. I have heard the learned counsel for the parties and have given my thoughtful consideration to their respective submissions.

17. The learned counsel for the parties have relied on a few authorities. I proceed to discuss these cases now.

18. In the case of Nagappa Ramaya Bab Balgi v. Santappa Pandurang Pai, reported in AIR 1938 Bom 311 relying on (1899) ILR 22 Mad 223 it has been observed :

'The wording of S. 14 of the Act is clear and the remedy which is given under the section and which is a summary remedy under the Act is to be obtained only against those persons in whom the properties of the institution have been duly vested for the purpose of management. In other words, the section contemplates that in a suit under this section the Court has not to pass any order against a person who is alleged to have intruded into management without authority, but that the only question to be considered is whether a person in whom property has been vested should be removed for misfeasance or malfeasance..... But that is not the position here. The plaintiffs' own case is that defendant No. 4 is not a person in whom the property or management has been vested. So, according to the plaintiffs' own allegation, 'defendant No. 4 does not come under this section.'

As a result of these observations the suit under S. 14 of the Act was dismissed against defendant No. 4 in the aforesaid authority.

19. In the case of *Sivayya v. Rami Reddi*, reported in (1899) ILR 22 Mad 223 the suit filed against purchasers from a trustee of the religious institution was held not to be covered by S. 14 of the Act. S. 14 of the Act was not intended to sue the purchasers from a trustee nor could the said purchasers be rendered answerable in such a suit.

20. In the case of *Ram Narain v. Jai Narain*, reported in : AIR1961 All125 it is held that in a case filed under S. 14 of the Act if the claim for damages have been given up, a relief that the defendant be ordered to render and explain the account of the trust property cannot be granted under the power to grant damages.

21. In the case of *Bhagwan Das v. Moti Chand Ram*, reported in : AIR1949 All612 an observation has been made by the Court, which reads as under:

'We think that S. 14 is applicable to trustees, managers or superintendents whether they had been appointed under the provisions of that Act or not. The words 'appointed under this Act' in the section refer only to the preceding word 'committee.' They cannot properly be made to refer to 'trustee, manager or superintendent.'

22 AIR 1938 Bom 311 (supra) was a case in which defendant No. 4 was admittedly a transferee from the trustee. In the plaint he was termed as intruder and a trespasser. Therefore, S. 14 of the Act could not cover the case of such a defendant. In the present case we are not concerned to examine what is the effect of filing a suit against a trespasser or intruder. It is a case in which the dispute is between the rival managers. Both claim to have been duly elected. The fact remains that the defendant's managing committee at this time is managers and superintendents of the religious institution in question. Therefore, on facts this authority is not of any help to the respondents. (1899) ILR 22 Mad 223 (supra) also is not of any help in this case because in that case also a suit was brought against a purchaser from the trustee and he was made answerable in a suit under S. 14 of the Act. Making a purchaser, who is a stranger to the institution, answerable in a suit under S. 14 of the Act is not intended by S. 14 of the Act. This authority, therefore also does not help the learned counsel for the defendant-respondents : AIR1961 All125 (supra) is also on a point with which we are directly

not concerned. It refers to the relief which, if given up in the plaint, could not form the basis for grant of another relief. This authority does not deal with the rejection of plaint for nondisclosure of cause of action : AIR1949 All612 (supra) lays down that S. 14 of the Act is applicable to trustees, managers or superintendents whether they have been appointed under the provisions of the Act or not. That would mean that if a person is not appointed as trustee, manager or superintendent under the provisions of the Act but nonetheless he discharges the functions of manager or superintendent and manages the property of the religious establishment, he can be sued under S. 14 of the Act.

23. From the reading of the authorities and the statutory provisions contained in S. 14 of the Act it is clear that a suit under S. 14 can be filed against a trustee, manager or superintendent or the member of any committee appointed under the Act. In respect of manager, trustee or superintendent there is no qualification that he must have been appointed under the Act in order to render him answerable in a suit under S. 14 of the Act nor does S. 14 envisage that the manager, trustee or trustees should be validly appointed under the Act then alone S. 14 of the Act can be invoked. The said section contemplates that if the property of a religious establishment is managed or supervised by a person he is answerable under S. 14 of the Act. In the present case the plaintiffs have mentioned that managers of the establishment, who are 41 in number including the respondents, were not elected in accordance with the wishes of the Jain Biradari but they after having been removed continued to hold the charge of Intzamia Committee. It is also contended that they are at present looking after the property as managers and superintendents but are committing acts of misfeasance and malfeasance. In reply to the contention raised by the plaintiffs in regard to the status of the defendants the written statement contains the assertion that the defendants along with 37 others in number are de facto and de jure trustees, managers and superintendents of the religious establishment in question. After filing the written statement it cannot be said by the defendants that they are trespassers and the suit has been filed against trespassers or intruders under S. 14 of the Act. This type of approbation or reprobation is not permitted under law. Therefore, the contention of the defend ant-respondents after filing the written statement could not be considered in respect of their status as managers of the religious establishment. If

out of 41 members of the committee, which manage the property of the establishment only four are made parties, that would be a defect of form and not of substance. The Court below could direct the plaintiffs to make the remaining 37 persons as parties, if the Court below was of the opinion that they are the necessary parties or if there was any objection raised in this regard by the defendants. Even the plaintiffs could apply for making 37 persons as defendants under O. 1, R. f 0, C.P.C. The omission to make them parties would be fatal only if the plaintiffs after direction from the Court fail to make them parties. On that count the plaint could not be rejected.

24. The defendants, they may be either four or there may be some more added to the plaint, are positively managing the temple as managers, superintendents and trustees. They claim themselves to be managing the establishment as such. Whether their induction as trustees, managers or superintendents was valid or not is to be determined in the main suit but the plaint contains concise statement that the defendants were removed as managers, superintendents or trustees but they did not obey the resolution and continued to hold the office of managers, superintendents or trustees and are managing the property. The allegation is that they are committing various acts of malfeasance and misfeasance, which is a ground on which the plaintiffs can seek a relief against them under S. 14 of the Act but their status which is asserted by the defendants themselves at the time of institution of the suit is not in doubt. What is in doubt is the validity of their status whether they were bound to follow the resolution of the Jain Panchayat and whether they could continue as trustees etc. etc. and whether they have committed various acts for which they are liable to be rendered answerable under S. 14 of the Act. This would therefore not afford a ground to the defendants to apply for rejection of the plaint and the trial Court was also in serious error to reject the plaint on the aforesaid plea.

25. It was next contended that the reliefs claimed by the plaintiffs in the plaint could not be granted to the plaintiffs under S. 14 of the Act. It is stated that the cause of action is related to the reliefs claimed.

26. The learned counsel for the defendant-respondents has referred to the case of *Shyam Lal Rawat v. Ram Lal*, reported in : AIR1987 All32 . In this case the allegation of corrupt practice were levelled and material facts were not pleaded in an election petition under the Representation of the People Act of 1951 which sought setting aside of election of an elected member of the Legislative Assembly. The contents of the petition were vague. The pleas regarding corrupt practice were not stated in concise form therefore, the election petition was rejected.

27. This authority would hardly help the defendant-respondents. It is a beaten tract that in an election petition which seeks to avoid election of an elected member to Legislature or Parliament on the ground of use of corrupt practice, material or concise facts which would amount to corrupt practice must be pleaded. If those concise pleas are not pleaded and if the facts are vague, the election petition is to be rejected. S. 83 of the Representation of the People Act makes it obligatory for any person, who challenges the election of an elected member, to state concise statement of material facts on which reliance is placed, to set forth full particulars of corrupt practice which are alleged including the names of the parties alleged to have committed such alleged practice and date and place of commission of each such corrupt practice. The mandate of S. 83 of the Representation of the People Act is to be strictly complied with and its non-compliance is fatal to the election petition. In ordinary civil cases the provisions of O. 6, R. 2, C.P.C. are to be followed and if there is vagueness in the plaint a better or further statement of any claim or defence can always be ordered for elucidating the pleadings. This is not possible in the case of election petition. Therefore, we have to fall back on O. 6 of the C.P.C. to examine what is to be contained in the pleadings. The pleadings can be amended also and the rules of amendment are now very liberal. Under O. 7 a relief is to be stated in the plaint and the Court has power to mould the relief in appropriate cases.

28. In the case of *Sivanand Roy v. Janaki Ballav Pattnaik*, reported in : AIR1985 Ori197 it is stated that 'cause of action' means the whole bundle of material facts which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit. The inclusion of cause of action in the pleadings is not the requirement of O. 7, R. 11, C.P.C. That is the requirement of O. 7, R. 1 which says

that the plaint among other thing should contain the facts constituting the cause of action and when it arose. If the cause of action is not disclosed the plaint is liable to be rejected under O. 7, R. 11. Therefore, with respect to the learned Judge of the Orissa High Court, the observations made by him in the said authority do not appear to be based on law and I have reason to disagree with the observations of the learned Judge of the Orissa High Court.

29. It is true that the cause of action means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence, which is necessary to prove each fact. In the case of *Mohammad Khalil Khan v. Mahboob Ali Mian*, reported in it is held that the cause of action has no relation whatever to the defence that may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff. It refers to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour. A cause of action for the plaintiff to recover the property would be disclosed if the plaintiff asserts title on the said property. If the plaintiff does not assert title on the said property he cannot file a suit on the basis of title for the property. So in such a suit cause of action would refer to the title of the plaintiff. Similarly in a suit of inheritance the plaintiff has to show the present right of his inheritance. If the plaintiff claims on the basis of a will during the lifetime of the executor of the will, he will have no cause of action because the property under the will is to be inherited by him after the death of the executor of the will. In a case falling under the *Moharnmendan Law* an heir cannot claim inheritance during the life time of the last owner because inheritance to the property will open when the last owner dies. In the same manner if a suit is filed for management of property as trustee or manager of the trust the plaintiff has to disclose his interest in the management as also the requirement as to why he wants to be appointed as trustee.

30. In the Orissa authority reliance is placed by the learned Judge on the case reported in . That authority does not make a mention of O. 7, R. 11, C.P.C. It has considered the effect of O. 2, R. 2 C.P.C. and in that context has explained the meaning of 'cause of action'. O. 2 R. 2, C.P.C. enjoins on plaintiff to include the whole of the claim which the plaintiff is--entitled to make in respect of the cause of

action but the plaintiff may relinquish any portion of the claim in order to bring the suit within the jurisdiction of the Court. Sub-rule (3) of this Rule says that a person entitled to more than one relief in respect of the same cause of action may sue for all or any such relief, but if he omits, except with the leave of the Court, to sue for all such reliefs he shall not afterwards sue for any relief so omitted. Sub-rule (2) of this Rule bars a fresh suit in respect of portion of a claim which was intentionally relinquished or omitted in the earlier suit. Therefore, it is not possible to hold that the cause of action has any relation with the relief claimed. Disclosure of cause of action is necessary for claiming the relief.

31. A relief, which is claimed in a plaint, can be moulded by the Court and if the relief, which is claimed by the plaintiff is not proved, the Court may refuse to grant such relief, but it cannot reject the plaint because the relief claimed for by the plaintiff is not substantiated by him on evidence. Moulding of relief is permissible under O. 7, R.7, C.P.C. A co-sharer has no right to get exclusive possession to the exclusion of another co-sharer. Therefore, he cannot bring a suit for possession over the land in dispute. But if such a suit is brought, the transferees from another co-sharer are also entitled to get joint possession over the land in dispute. In such a case the Court should mould the relief and can pass a decree for joint possession between the co-sharer and transferee from another co-sharer but the suit cannot be dismissed for not having claimed a correct relief. (See the case of *Pandohi Ahir v. Faruq Khan*, reported in : AIR1954 All191 ).

32. The learned counsel for the respondents also submitted that the present suit could be brought under S. 92, C.P.C. Having regard to the reliefs claimed, S. 92, C.P.C. was a proper remedy for filing the suit. This submission is misplaced, for the reasons I have mentioned in the earlier part of this judgment and for another reason which emerges from the order of the trial Court dated 24-7-1991 by which the plaintiff-appellants were granted leave to file the suit under S. 14 of the Act. After having granted permission under S. 14 of the Act to file the suit, it could not be converted into a suit filed under S. 92, C.P.C.

33. If there was any defect in the relief clause of the plaint, that could be corrected by the plaintiffs by appropriate amendment. Even now the plaintiffs can file an

application for appropriate amendment and the Court below has to consider the desirability of allowing them to amend the plaint and claim the reliefs which could be granted under S. 14 of the Act. For not articulating the reliefs properly the plaint could not be rejected under O.7, R. 11(a), Civil P.C. does not contain any provision by which a plaint can be rejected for any defect in the reliefs claimed by the plaintiff.

34. The application of the defendants for rejection of the plaint under O.7, R. 11, C.P.C. was misconceived and should not have been allowed by the Court below on the grounds on which it has been allowed. The judgment of the Court below is based on perverse interpretation of law and is erroneous.

35. For the reasons stated above, I set aside the judgment of the Court below dated 28-1-1992 and allow this appeal. However, there will be no order as to costs. The Court below will consider the suit on its merits and if any application for amendment is made, that shall also be considered in accordance with law.

36. Appeal allowed.