

***THE HON'BLE SRI JUSTICE SANJAY KUMAR**

C.R.P.NO.4904 OF 2013

% 31-12-2014

P. Pushpamala Reddy

... Petitioner

Vs.

\$ Janga Raghava Reddy

...Respondent

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Sri T.V.Ramana Rao

^ Counsel for respondent :

? CASES REFERRED:

[1] (2006) 6 SCC 456
2.AIR 2012 SUPREME COURT 3912

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.4904 OF 2013

DATED 31st DECEMBER, 2014

Between:

P. Pushpamala Reddy

... Petitioner

and

Janga Raghava Reddy

... Respondent

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.4904 OF 2013

ORDER

The first defendant in O.S.No.39 of 2008 on the file of the learned IV Additional District Judge (FTC), Warangal, filed I.A.No.255 of 2013 therein under Order 7 Rule 11 CPC seeking rejection of the plaint. By order dated 17.07.2013, the trial Court dismissed the I.A. Aggrieved, the first defendant is before this Court under Article 227 of the Constitution.

This Court issued notice to the respondent/ plaintiff on 21.02.2014. The notice was however returned with the endorsement 'not claimed'. Significantly, the address to which the notice was sent was the same address furnished by the respondent/plaintiff in his plaint. Failure of the respondent/plaintiff to claim the notice sent through registered post to his last known address would therefore qualify as 'deemed service' (***D. VINOD SHIVAPPA V/s. NANDA BELLIAPPA***^[1]).

The suit, O.S.No.39 of 2008, was filed against the petitioner/ first defendant and her former General Power of Attorney holder ('GPA holder') for specific performance of a sale agreement. The case of the respondent/plaintiff was that the GPA holder had entered into an agreement of sale with him on 22.02.2008. While so, by way of the subject I.A., the petitioner/first defendant contended that there was a clear prohibition in the deed of power of attorney executed by her, which

barred the GPA holder from entering into any kind of agreement or alienation by way of sale, mortgage, exchange, donation or transfer of any other kind in respect of the suit property. She therefore asserted that there was no cause of action for the respondent/plaintiff to seek specific performance of the alleged agreement of sale as there was no privity of contract between herself and the respondent/plaintiff.

It is pertinent to note that earlier, when the trial Court granted an interim injunction restraining the defendants in the suit from alienating the suit property, the petitioner/first defendant filed C.M.A.No.295 of 2010 before this Court challenging the said order. A learned Division Bench of this Court allowed the CMA on 04.12.2012. Perusal of the order passed in the CMA reflects that the Bench opined that the agreement of sale said to have been executed by the GPA holder, purportedly on behalf of the first defendant, lacked authority of law as Clause 7 of the General Power of Attorney specifically prohibited any sort of alienation of the suit schedule property by the GPA holder. Having stated so, the learned Division Bench directed the trial Court to dispose of the suit expeditiously and on priority basis.

Surprisingly, the trial Court referred to and extracted the observations of the learned Division Bench in the said order but failed to infer the significance of the findings of this Court. No doubt, the learned Division Bench had directed the trial Court to dispose of the suit uninfluenced by its observations, but the legal position as spelt out by this Court ought to have been a guiding factor to the trial Court while considering the petition filed by the petitioner/first defendant seeking rejection of the plaint. Further, the observation of the trial Court that the questions as to whether the first defendant had executed the General Power of Attorney or not; whether she had any intention of prohibiting the GPA holder from executing the agreement; and whether the GPA holder had any authority after execution of the said General Power of Attorney, could be gone into only after a full-fledged trial, is peculiar to say the least. The petitioner/first defendant had never denied execution of the General Power of Attorney. Her intention to prohibit the GPA

holder from selling the suit property was evident from Clause 7 therein, as pointed out by this Court in the order passed in the CMA. In the light of such prohibition, this Court had already found that the GPA holder lacked authority to enter into the alleged agreement of sale. Therefore, the questions posed by the trial Court were redundant as the answers thereto were self-evident and needed no independent adjudication through a full-fledged trial.

The provisions of Order 7 Rule 11 CPC are couched in liberal terms so as to vest the trial Court with the power of rejecting the plaint at the threshold so that the valuable time of the Court is not wasted in adjudicating frivolous suits which could be rejected *in limine*. The opinion of the trial Court that a separate issue could be framed as to the rejection of the plaint and that the same could be gone into in the main suit after a full-fledged trial is completely retrograde and lacks proper understanding of the objective and purpose underlying the provisions of Order 7 Rule 11 CPC.

Reference may also be made to the judgment of the Supreme Court in ***THE CHURCH OF CHRIST CHARITABLE TRUST AND EDUCATIONAL CHARITABLE SOCIETY, REP. BY ITS CHAIRMAN V/s. M/S. PONNIAMMAN EDUCATIONAL TRUST REP. BY ITS CHAIRPERSON/MANAGING TRUSTEE***^[2]. Therein also, the first defendant in the suit, being the owner of the property, had executed a registered power of attorney in favour of the second defendant for limited purposes. While so, a suit for specific performance was filed upon an alleged sale agreement executed by the second defendant basing on the power of attorney. The first defendant society filed an application under Order 7 Rule 11 CPC seeking rejection of the plaint. A learned Single Judge of the Madras High Court ordered the application but that decision was reversed by a Division Bench of the Madras High Court. The issue thereupon came before the Supreme Court. The Supreme Court observed that the plaintiff/respondent, to get a decree for specific performance, had to prove that there was a subsisting agreement in his

favour and that the second defendant had the necessary authority under the power of attorney to execute the agreement of sale. The Supreme Court further observed that the power of attorney had to be strictly construed and in order to agree to sell or effect a sale, a power of attorney holder should be expressly authorized with the power to execute such an agreement of sale or sale deed. Perusal of the power of attorney in that case manifested that no such power of selling or entering into an agreement of sale was conferred upon the attorney. The Supreme Court therefore held that the second defendant, standing in a fiduciary capacity under the power of attorney, could not have acted for his own benefit and therefore, the plaint was liable to be rejected at that stage itself as the cause of action pleaded was vitiated. The facts being identical, the principle laid down in this decision applies on all fours to the case on hand.

Thus, the trial Court completely misapplied itself while considering the subject I.A. in the light of the settled legal position. The subject suit was clearly without cause of action in the light of the positive embargo placed on the GPA holder from alienating the suit property and as the suit was admittedly based on an alleged agreement of sale executed by the said GPA holder. The trial Court therefore ought to have rejected the plaint on this count. The order of the trial Court holding to the contrary is clearly unsustainable in law and is accordingly set aside. I.A.No.255 of 2013 in O.S.No.39 of 2008 is allowed. Applying the provisions of Order 7 Rule 11 CPC, the plaint in O.S.No.39 of 2008 on the file of the learned IV Additional District Judge (FTC), Warangal, shall stand rejected and the suit shall stand dismissed.

The Civil Revision Petition is allowed but, in the circumstances, without any order as to costs.

SANJAY KUMAR, J

31st DECEMBER, 2014

L/R copy to be marked – Yes

B/o Svv

[\[1\]](#) (2006) 6 SCC 456

[\[2\]](#) AIR 2012 SUPREME COURT 3912