

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

CIVIL REVISION PETITION No.3241 of 2014

-
DATE: 30.01.2015

Between:

Y. Sri Ramulu

...Petitioner

and

K.Venkatesham

...Respondent

COUNSEL FOR THE PETITIONER : SRI KONETI RAJA REDDY

COUNSEL FOR THE RESPONDENT: ---

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

CIVIL REVISION PETITION No.3241 of 2014

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ORDER:

This Civil Revision Petition arises out of order, dated 27.06.2014 in I.A.No.318 of 2014 in O.S.No.18 of 2014 on the file of the learned Principal Junior Civil Judge, Ranga Reddy District.

The respondent has filed above-mentioned suit for perpetual injunction restraining the petitioner from parking car in the stilt area of the complex known as 'Laxmi Nivas' bearing municipal No.11-13-116/24, admeasuring 500 sq.yards, situated at Road No.6, Ramakrishnapuram, Kothapet, Ranga Reddy District. It is his pleaded case that he is the absolute owner and possessor of flat bearing No.202, Laxmi Nivas, including common areas and balcony along with car parking and undivided share of 49 sq.yards in the said premises and that the petitioner is the owner of flat No.201, second floor, admeasuring 1115 sq.feet in the same complex without right to park his car. The respondent averred that the recitals and description of the schedule property in the sale deeds of the parties would reveal that while he has got car parking rights in the stilt area, the petitioner does not have such a right. On this premise, the respondent has filed the suit for permanent injunction against the petitioner.

The petitioner has filed written statement, raising various pleas on merits and also the plea that the suit is not maintainable as it is against the provisions of the Andhra Pradesh Apartments (Promotion of Construction and Ownership) Act, 1987 (for short 'the Act'). After filing the written statement, the petitioner has filed I.A.No.318 of 2014 under Order VII Rule 11(d) CPC for rejection of the plaint. The main premise on which this application is filed is that under Section 24 of the Act, selling or leasing out or misuse of common areas is prohibited and therefore, the claim of the respondent/plaintiff that he has purchased the parking area through registered document dated

29.12.2010 is not sustainable and that as the car parking area forms part of common area, the petitioner is entitled to use the same by parking the car notwithstanding the sale deed does not contain the fact that the parking area is allotted to him. The lower Court by order, dated 27.06.2014, has dismissed the said application. It has opined that the issue whether the common area in the apartment premises could be sold or not being a mixed question of fact and law needs to be adjudicated only after trial. The lower Court has further opined that as the provisions of the Act have not expressly or impliedly barred institution of civil suit in respect of any such common areas or questions with regard to such areas, the petitioner is not entitled to question the order under Order VII Rule 11(d) CPC. Feeling aggrieved by the said order, the petitioner has filed this Civil Revision Petition.

Sri Koneti Raja Reddy, learned counsel for the petitioner passionately urged that the suit is wholly misconceived as the relief claimed therein is barred by the provisions of the Act and therefore, the lower Court ought to have rejected the plaint. He has further submitted that when the plaint does not disclose clear right to sue, the Court of first instance should exercise its power under Order VII Rule 11 CPC to prevent bogus and vexatious litigation. In support of his submission, he has placed reliance on the judgment of the Hon'ble Supreme Court in **T.ARIVANDANDAM v. T.V.SATYAPAL AND ANOTHER**^[1].

I have carefully considered the submissions of the learned counsel for the petitioner with reference to the record.

Order VII Rule 11 CPC deals with rejection of plaint. If the Court is satisfied that any one or more of the grounds mentioned in clauses (a) to (f) exists, it can reject the plaint. The petitioner has pleaded that the suit is liable to be rejected under Order VII Rule 11 CPC. Clause (d) of Rule 11 CPC reads as under:

“where the suit appears from the statement in the plaint to be barred by any law.”

From the plain language of this provision, it can be understood that whether any law either expressly or by implication bars filing of a suit, the Court can reject the plaint. Therefore, in order to bring a plaint within the provisions of those clauses, the defendant must satisfy the Court that filing of suit is barred under the extant enactment either expressly or by implication. The dispute raised in the suit is governed by the provisions of the Act. No provision is brought to the notice of this Court whereby it has barred the civil Court's jurisdiction to entertain the suit of any nature. A statute barring the suit is distinct from absence of a right of the plaintiff to claim relief under the particular enactment. Rejection of plaint based on express or implied bar under the statutory enactment stands on a different footing from a case where the claim put forth by the plaintiff is allegedly not being supported by the provisions of an enactment. While in the former category cases, there is no option for the Court other than exercising its power under clause (d) of Rule 11 of Order VII CPC, in the latter category of cases, the Court would not ordinarily exercise its jurisdiction for rejection of plaint. Obviously, reason for this is that whether under the provisions of the statutory enactment, the plaintiff established the right or not needs to be adjudicated based on the pleadings as well as the evidence, both oral and documentary. It will be hazardous for any Court to reject the plaint based on mere *prima facie* or superficial examination as to whether the plaintiff has established the right to be granted relief in the suit. Such examination in every case at the pretrial stage will consume substantial time of the Court and lead to delay in disposal of the cases, besides generating litigation by way of appeals and revisions arising out of such orders. Unless the Court is satisfied that filing of suit is barred by a statutory enactment either expressly or impliedly, and further continuance of the proceedings causes grave prejudice to the defendants, it will not generally proceed further and examine whether

the plaintiff has made out a *prima facie* case for further continuance of suit proceedings.

In **T.ARIVANDANDAM** (supra), eviction proceedings were initiated against a tenant. The tenant has suffered eviction order. The same was confirmed in appeal and revision. While dismissing the revision petition, the High Court has granted time for vacating the premises. After getting the full benefit of the generosity shown by the High Court by granting six months time for locating in different premises, the tenant and his son had embarked upon for filing the fresh suit for a declaration that the eviction order as confirmed right up to the High Court and resisted by the 2nd respondent throughout, was obtained by 'fraud and collusion'. In that context, the Supreme Court has held that the Court has to examine whether the trial Court would have exercised its power under Order VII Rule 11 CPC while entertaining the suit, and rejected the plaint, where it does not disclose a clear right to sue. On the undisputed fact of the suit filed by the tenant and his son, there was absolutely no doubt that it was a vexatious litigation avoiding eviction despite the fact that the eviction order is confirmed by the appellate and revisional Courts.

The present case cannot be compared with the facts in **T.ARIVANDANDAM** (supra). As rightly observed by the lower Court that the provisions of the Act and the effect of recitals in the sale deed of the petitioner need to be adjudicated only after recording of evidence. Any such conclusion arrived at the stage of consideration of Order VII Rule 11(d) CPC would amount to premature adjudication and the same is not desirable in the absence of evidence on record. In the absence of any provision under the Act expressly barring the suit, the lower Court has rightly dismissed the application filed by the petitioner for rejection of the plaint.

In view of the above-mentioned reasons, I do not find any merit

in the Civil Revision Petition and the same is accordingly dismissed.

Having regard to the nature of the suit and the hardship pleaded by the petitioner, the lower Court is directed to dispose of the suit within six months from the date of receipt of this order.

As a sequel to dismissal of main petition, CRP.MP.No.4440 of 2014 filed by the petitioner for interim relief is disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

30th JANUARY, 2015.

Note: L.R.Copy be marked.

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[\[1\]](#) AIR 1977 SUPREME COURT 2421