

**\*THE HONOURABLE SRI JUSTICE A.V.SESHA SAI**

**+CIVIL REVISION PETITION No.1872 of 2014**

% 20.02.2015

#Emundla Lingaiah.

....Petitioner

Vs.

\$ Kokkula alias Burra Narsavva and others.

....

Respondents

!Counsel for the Petitioner : Sri P.V. Narayana Rao.  
Counsel for Respondent No.1: Sri V.V.Ramana Rao.  
Counsel for Respondent No.3: Sri Pulla Karthik.  
Counsel for Respondents 4 to 7: --

<Gist :

>Head Note:

? Cases referred:

[1] (1977) 4 SCC 467

<sup>2</sup> 2007 (5) ALD 565

<sup>3</sup> 2014(4) ALD 63 (SC)

<sup>4</sup> AIR 1974 PATNA 153

<sup>5</sup> 2007(6) ALD 388 (DB)

<sup>6</sup> 2013 (5) ALD 439 (DB)

<sup>7</sup> 2013(5) ALD 72

**THE HONOURABLE SRI JUSTICE A.V.SESHA SAI**

**CIVIL REVISION PETITION No.1872 of 2014**

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## **ORDER**

Defendant No.2 in O.S.No.740 of 2004 on the file of the Court of Principal Junior Civil Judge at Karimnagar, is the petitioner in the present revision filed under Article 227 of the Constitution of India. This revision assails the order dated 24.04.2014, passed by the said Court, dismissing I.A.No.1827 of 2012 filed by the petitioner under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter called 'the Code').

2. The facts and circumstances, in nutshell, leading to the filing of the present revision are as under;

First respondent herein instituted O.S.No.740 of 2004 on the file of the Court of Principal Junior Civil Judge at Karimnagar, for perpetual injunction. In the said suit, second defendant filed I.A.No.1827 of 2012 under Order VII Rule 11 of the Code, seeking rejection of the plaint on the ground of absence of cause of action. The plaintiff/respondent herein filed a counter, resisting the said application. The learned Principal Junior Civil Judge, by virtue of an order, dated 24.04.2014, dismissed the said application. This revision challenges the said order.

3. Heard Sri P.V.Narayana Rao, learned counsel for the petitioner and Sri V.V.Ramana Rao, learned counsel for the first respondent apart from perusing the material available before this Court.

4. Contentions/submissions of the learned counsel for the petitioner are;

- (i) The order under revision is erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Order VII Rule 11 of the Code;

(ii) Since no cause of action is available to the plaintiff for prosecuting the suit further, the learned Judge ought to have allowed the application by rejecting the plaint;

(iii) In view of the filing of I.A.No.3167 of 2007 under Order VI Rule 17 of the Code and the order passed thereon and the order of this Court in C.R.P.No.3913 of 2008, the cause does not survive for the plaintiff to further prosecute the suit;

(iv) The order in C.R.P.No.3913 of 2008 operates as *res judicata* as it is an order passed by this Court under Article 227 of the Constitution of India;

(v) Plaintiff/first respondent has to file a suit for partition and cannot proceed further with the present suit as per Section 8 of Hindu Succession Act, 1956.

5. To bolster his submissions and contentions, learned counsel for the petitioner places reliance on the decisions reported in **T.ARIVANDANDAM v. T.V.SATYAPAL**<sup>[1]</sup>; **PRATHIBHA v. VEDVATHI**<sup>[2]</sup>; **SOUMIK SIL v. SUBHAS CHANDRA SIL**<sup>[3]</sup>; **RAMSARUP DASS v. PYARE DAS**<sup>[4]</sup>; and **GADIYARAM PADMAVATHI v. ADDEPALLI HANUMANTHA RAO**<sup>[5]</sup>.

6. Contentions/submissions of the learned counsel for the first respondent/plaintiff are;

(i) The order impugned is in accordance with the provisions of Order VII Rule 11 of the Code;

(ii) There is no illegality nor there is any jurisdictional error in the impugned order, as such, the present revision is not maintainable under Article 227 of the Constitution of India;

(iii) The present application is also liable to be dismissed on the

ground of delay and no plausible explanation is forthcoming for the abnormal delay in filing the application under Order VII Rule 11 of the Code;

(iv) As per Order VII Rule 11 of the Code, the averments in the plaint alone need to be taken into consideration, but not the defence set up by the defendants;

(v) Since the plaint discloses the cause of action, the plaint cannot be rejected at threshold and the plaintiff filed title deeds and pahanies, as such, he is entitled to prosecute the suit on merits;

(vi) *Res judicata* is not a ground for rejection of plaint under Order VII Rule 11 of the Code;

(vii) judgments cited by the learned counsel for the petitioner are not relevant to the facts and circumstances of the case.

7. In support of his submissions and contentions, learned counsel for the first respondent takes the support of the judgments reported in **REEMANA KAUSHIK v. SHOBHIT KAUSHIK**<sup>[6]</sup>; and **SYED ALI v. SYED NOOR MOHAMMED**<sup>[7]</sup>.

8. In the above background, now the issues, which this Court is called upon to answer in the present revision, are;

- (i) Whether the order under revision is in accordance with the provisions of Order VII Rule 11 of the Code?
- (ii) Whether the order under revision warrants any interference of this Court under Article 227 of the Constitution of India?

9. In order to appreciate the rival contentions and for arriving at a just and reasonable conclusion, it may be opt and appropriate to refer to the provisions of Order VII Rule 11 of the Code, which reads as under;

**“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;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of rule 9;

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 the reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for 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".

From a plain reading of the above provision of law, it is quite limpid that only under the conditions and contingencies as stipulated under Clause (a) to (f) of Rule 11 of Order VII of the Code, plaint can be rejected. Since this provision of law empowers the Court to non-suit a party at threshold, strict compliance of the ingredients is mandatory and this power is required to be utilized and made use of very sparingly and with great care, caution and circumspection. Unless the party applying for thoroughly and completely satisfies and proves the existence of necessary ingredients of law, the exercise of power under these provisions of law is impermissible to the Court. The issue in the present revision is required to be examined in the light of these aspects.

10. As per the plaint presented by the first respondent herein, the petitioner is the owner and possessor of the agricultural lands, admeasuring Ac.1.17½ gts in Sy.Nos.358/A and 371/C situated at

Velichala Village, Ramadugu Mandal, Karimnagar District and that suit lands are compact lands and that the plaintiff and the first respondent are the natural sisters and in the partition, plaintiff was given the suit lands and that the mother of the plaintiff and the first defendant relinquished their rights in the suit lands and the revenue records are in the name of the plaintiff, and in view of the hike in the value of the lands, the first defendant in collusion with defendants 2 and 3 hatched a plan to occupy the land and without any manner of right, the defendants tried to dispossess the plaintiff from the lands.

11. Earlier, the first respondent/plaintiff filed I.A.No.3167 of 2007 under Order VI Rule 17 of the Code seeking amendment of the main relief portion to the following effect;

“Therefore it is just and necessary that an order is passed permitting me to amend the suit by adding relieves in claim portion, court fee para No.3 and prayer portion in addition to main relief of perpetual injunction as under:

(i) for recovery of possession of land measuring 1331 sq. yards in Sy.No.358/A and for declaration that the registered sale deed document No.1155/04 dated 16.08.2004 executed by defendant No.1 in favour of defendant No.3 in respect of land measuring 1331 sq. yards in Sy.No.358/A and another registered sale deed No.1032/04 dated 26.07.2007 executed by defendant No.1 in favour of defendant No.2 in respect of land measuring 605 sq. yards in suit Sy.No.358/A are null and void and not binding on the plaintiff’ in claim portion at it’s end

(ii) The value of land to an extent of 1331 sq. yards which is sought to be recovered is Rs.66,550/- and 3/4<sup>th</sup> of it is Rs.49,912/- and upon which a Court Fee of Rs.2,386/-is paid u/s.29 of APCF and SV Act and the value of relief of declaration that the registered documents for which they were executed as null and void and not binding is fixed at Rs.3,000/- each i.e., total Rs.6,000/- and upon which a court fee of Rs.261/-each i.e., total Rs.522/-is paid u/s.26(d) of APCF and SV Act and total of Rs.2,908/- is paid in SBH Court Complex, Karimnagar through challan” in para No.8 as it’s end and

(iii) to pass judgment and decree for recovery of possession of land to an extent of 1331 sq. yards in Sy.No.358/A against defendant No.3

iv) to pass judgment and decree for declaration that the registered sale deed document No.1155/04 dated 16.08.2004 executed by defendant No.1 in favour of defendant No.3 in respect of land to an extent of 1331 sq. yards in suit Sy.No.358/A and a registered sale deed No.1032/04 dated 26.07.2004 executed by defendant No.1 in favour of defendant No.2 in respect of land admeasuring 605 sq.yards out of suit Sy.No.358/A are null and void and not binding on the plaintiff' in prayer portion at the end and permit me to amend consequential amendments'.

12. In the affidavit filed in support of the said I.A.No.3167 of 2007, the plaintiff stated that while the order of injunction was in force, defendants 3 and 4 to 7 raised a temporary shed in the suit land illegally. The learned Principal Junior Civil Judge, by way of an order dated 17.07.2008, dismissed the said application. Assailing the said order, plaintiff filed C.R.P.No.3913 of 2008. In the said order, this Court in the penultimate paragraph observed that when first respondent in her written statement took a plea that the suit schedule property belongs to her and she sold away the same to defendants 2 and 3 through registered sale deeds dated 20.04.2004 and 26.07.2004, no steps have been taken by the revision petitioner and this Court also observed that in the event of the proposed amendment being permitted, the same would go beyond the scope of the suit and would change the nature of the suit. While referring to the said observations made by this Court, filing of I.A.No.3167 of 2007 and dismissal of the same and the confirmation of the same by this Court, it is the case of the petitioner that there is no cause of action for the petitioner and the order of this Court in the said revision operates as *res judicata*. Now, these contentions are required to be considered in the light of the judgments cited by the learned Advocates.

13. In **T. ARIVANDANDAM's** case (1 supra), the Apex Court held as under;

“We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the Court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful-not-formal-reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11 CPC, taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X CPC. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr.XI) and must be triggered against them. In this case, the learned Judge to his cost realized what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:

“It is dangerous to be too good”

We regret the infliction of the ordeal upon the learned Judge of the High Court by a callous party. We more than regret the circumstance that the party concerned has been able to prevail upon one lawyer or the other to present to the Court a case which was disingenuous or worse. It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an advocate is an officer of justice he owes it to society not to collaborate in shady actions. The Bar Council of India, we hope will activate this obligation. We are constrained to make these observations and hope that the co-operation of the Bar will be readily forthcoming to the Bench for spending judicial time on worthwhile disputes and avoiding the distraction of sham litigation such as the one we are disposing of. Another moral of this unrighteous chain litigation is the gullible grant of ex parte orders tempts gamblers in litigation into easy courts. A judge who succumbs to ex parte pressure in unmerited cases helps devalue the judicial process. We must appreciate Shri

Ramasesh for his young candour and correct advocacy”

In **PRATHIBHA’s** case (2 supra) this Court held as under;

“The real object of Order VII Rule 11 of CPC is to keep out of Courts irresponsible law suits. Therefore, the Order 10 of the Code is a tool in the hands of the Courts by resorting to which and by searching examination of the party in case the Court is *prima facie* of the view that the suit is an abuse of the process of the Court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised”.

In **SOUMIK SIL’s** case (3 supra) the Apex Court held as under;

“After perusing the order passed by the High Court and the reasoning given therein, it appears to us that the High Court has correctly perused the plaint in its entirety and after deletion of the name plaintiff No.1 from the said title suit, held that the plaint discloses no cause of action after taking into account the fact that the very purpose of the suit has become infructuous in view of the order passed by the High Court to handover the possession of the rooms in question. Therefore, the foundation of the suit was not subsisting after the handing over of possession to the defendant by plaintiff No.1 in terms of the order. Hence, in these circumstances, the High Court held that the plaint discloses no cause of action”.

In **RAMSARUP DASS’s** case (4 supra) it was held as under;

“Learned counsel, however, submitted that the revisional jurisdiction of the High Court was an extraordinary jurisdiction and, therefore, any decision given by this Court in exercise of the revisional powers would not amount to res judicata for entertaining the same objection or ground in a regular appeal. It is difficult to accept this contention. Learned counsel referred to the decision of the Supreme Court in *Satyadhvan Ghosal v. Smt Deorajin Debi* AIR 1960 SC 941. In that case, however, the facts were entirely different. The Supreme Court was considering the scope of Section 105(2) of the Code of Civil Procedure and it was held that a special provision was made as regards orders of remand and that was to the effect that if an appeal lay and still the appeal was not taken, the correctness of the order of remand could not later be challenged in an appeal from the final decision. If however an appeal did not lie from the order of remand, the

correctness thereof could be challenged by an appeal from the final decision. In that case, an order of remand was made by the Calcutta High Court in exercise of its revisional power under Section 115 of the Code of Civil Procedure. It was observed by the Supreme Court after referring to the various decisions of the Privy Council that the order of remand was an interlocutory order and did not purport to dispose of the case, and a party was not bound to appeal against every interlocutory order which was a step in the procedure that leads up to a final decision and as such the correctness of the same could be challenged in an appeal from the final order. It was specifically held in that case that the order of the Calcutta High Court was not appealable to the Supreme Court and, therefore, the bar under sub-section (2) of Section 105 of the Code of Civil Procedure was not attracted. The Supreme Court, accordingly, set aside the order of the Calcutta High Court. In my opinion, the decision of the Supreme Court in the above case is of no assistance to the appellants. In this very decision, the Supreme Court has laid the foundation for applying the principles of *res judicata*. In paragraph 8 of the report, their Lordships have clearly observed that the principle of *res judicata* applies also as between two stages in the same litigation to this extent that a court, whether the trial Court or a higher Court, having at an earlier stage decided a matter in one way, will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings.

In view of the aforesaid decisions of the Supreme Court, it is no necessary for me to advert to any other authority. But suffice it to state that a similar view has been taken by the Punjab High Court in *Balkrishan Dass v. Parmeshri Dass*, AIR 1963 Punj 187 and by a Full Bench (sic) of the Madhya Pradesh High Court in *Shyamacharan Raghubar Prasad v. Sheojee Bhai Jairam Chattri* AIR 1964 Madh Pra 288. I am in respectful agreement with the views expressed by the Punjab and Madhya Pradesh High Courts. In view of the binding effect of the decisions of the Supreme Court referred to above, I am of the definite view that the contention raised by Mr. Prem Lall that the decision in Civil Revision No.1025 of 1968 will not amount to a *res judicata* in this appeal has got no substance.

In **GADIYARAM PADMAVATHI's** case (5 supra), this Court held as under;

“From a conjoint reading of the judgments of the apex

Court in Liverpool and London's case and R. ARivandanandam's case (supra), it is clear that a plaint can be rejected if it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue and by way of 'clever drafting', an illusory cause of action has been created to institute a suit. Such a suit should be thrashed out at the outset instead of subjecting the other party to unnecessary hardship and lying unnecessary burden of conducting trial by the Courts or if it is perceptible that the party, who instituted the suit, is apparently found to be having an intention to cause 'undue loss' for other party and gain undue advantage' for self.

The scope of Order VII Rule 11 CPC, which has been interpreted by the apex Court time and again, may not be in strict terms of Order VII Rule 11 CPC. But, it is obvious from the interpretations made by the apex Court that in order to slash unnecessary litigation or an artificial litigation for an undue gain, the same should be treated as an 'abuse' and the Court is vested with the power to curtail such a litigation.

At this juncture, we may also point out that not only depending upon the various facts and circumstances but also keeping in view the trend of the litigation, which is on increasing side, for various reasons should be dissuaded from being initiated if no substantial cause action to try the suit. This would enable the Court from avoiding any unnecessary expenditure of time and money not only of the Court but also the parties to the litigation. Therefore, whenever the Court found that there is an apparent reason on record i.e., the plaint and the relevant material filed along with it that there is no real cause of action, the same can be decided as almost a preliminary question.

It is also well settled law that rejection of a suit can be sought for at any time during the pendency of the suit and no material except the plaint averments and the supporting documents can be gone into while exercising the power under Order VII Rule 11 CPC".

Virtually in the present plaint, the plaintiffs are going 'hot and cold'. On one hand, they are seriously disputing the Will, dated 14.02.1975, said to have been executed by late GVN Murthy in favour of their deceased aunt Vedavathi and on the other, they are claiming rights by way of succession without impeaching the said Will. Therefore, the contentions of this nature, obviously, are incompatible.

Even if the relief sought in the plaint i.e., partition is granted in favour of the plaintiffs, the effect of the Will, dated 14.02.1975, and the rights that flowed out of the said Will executed by late GVN Murthy in favour of Smt Vedavathi

would remain the same, which would run contrary to the decision if rendered in favour of the plaintiffs. We are of the view that this situation is something absurd.

Therefore, we have to hold that filing a suit after more than three decades for this relief cannot be accepted and the conduct of the plaintiffs in this regard cannot be appreciated, and the consequential litigation has to be dissuaded from progressing any further, which is one among the main objects of the provisions of Order VI Rule 11 CPC.

14. Coming to the judgments cited by the learned counsel for the first respondent, in **REEMANA KAUSHIK's** case (6 supra), this Court held as under;

“In the context of dealing with an application under Rule 11 of Order 7 CPC, the Court has to take the pleadings in the plaint or the O.P., as the case may be, on their face value. Even if there is any dispute, that needs to be resolved after trial. It is only when the contents of the plaint or O.P. are taken on their face value and still they do not constitute cause of action or the suit or the O.P. becomes barred by law, that the application filed under that provision can be allowed”.

In **SYED ALI's** case (7 supra) it was held as under;

Rule 11 of Order VII CPC, provides for an exceptional remedy to the defendant in a suit, to get the proceedings terminated without the necessity of trial. In the ordinary course of things, once a suit is filed, the issues are to be framed on the basis of pleadings and the Court has to determine the issues, after conducting trial and it is thus the suit comes to be terminated, with a decree on merits. The facility created under Rule 11 of Order VII CPC is that, if the grounds mentioned therein are attracted, in a given case, the plaint can be rejected, and thereby, the necessity to undertake trial is obviated. The provision reads:

**“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;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9;

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 the reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for 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.

From a perusal of this, it is evident that res judicata is not mentioned as a ground for rejection of plaint.

Section 11 of CPC is devoted to define the concept of res judicata. The Legislature, which elaborated the principle of res judicata in minute detail in Section 11, did not choose to treat it as a ground for rejection of plaint, and obviously for that reason, it was not included in Rule 11 of Order VII CPC. The reason is not difficult to discern.

In a suit, the relief of comprehensive nature is prayed for. It is in relation to the relief, and based upon the pleading, that several issues are framed in a suit. The result of a suit would depend upon the answer to various issues. Even if one or few issues are answered against the plaintiff, there may be circumstances where the suit can still be decreed, on the basis of finding on the other issues.

The starting sentence of Section 11 CPC makes it clear that the provision deals with the determination of “issues” in a suit, and not the result thereof. What Section 11 prohibits is, raising of issues in a subsequent suit, in case they have been decided as between the same parties by a Court of competent jurisdiction, in an earlier suit.

The principle of res judicata cannot be pressed into service for rejection of the plaint. The reasons are more than one. Firstly, the question as to whether the issue that is framed in a subsequent suit is the same, as or substantially similar to, the one that fell for consideration in an earlier suit, and whether the parties are one and the same, is a question of fact, which can be determined only on evidence and the principle of law gets attracted depending upon the answer on facts. In that view of the matter, it is a mixed of question of fact and law. It may be that the volume of evidence could determine such question may be relatively small. All the same, the evidence as such, must be adduced to prove the contention.

Secondly, even where one of the issues framed in a subsequently filed suit is found to have been barred by res judicata, the other issues need to be dealt with and answered. The matter can be demonstrated through the present suit

itself. The respondent claimed the relief of title and possession. Assuming that the question of title has been determined in earlier suit, the one relating to possession remains. Even if a plaintiff in a suit of this nature fails to prove title, he can be granted the relief of perpetual injunction, in case he proves possession over the suit schedule property.

Thirdly, Order VII Rule 11 CPC, which has the effect of denying or barring access to the plaintiff to a civil Court, must be interpreted strictly. Any doubt, or second opinion, in this behalf, needs to be extended to the plaintiff, so that, the power of the civil Court to decide the suits remains in tact. On general principles also, the right or competence of civil Court is almost taken for granted that an aggrieved individual can seek redressal from a civil Court, unless the suit is specifically barred. Once *res judicata* is not included as a ground in Rule 11 of Order VII CPC, it cannot be added, nor can the relief under the provision be extended through implication”.

15. The principles which can now be deduced from a reading of the above judgments are that; since the power conferred on the Courts under Order VII Rule 11 of the Code are extraordinary, drastic, the same is required to be exercised very sparingly and with great care, caution and circumspection and that the same should be considered in the light of the pleadings in the plaint and not based on the defence set up by the defendants in the written statement and that the *res judicata* cannot be a ground for non suiting the plaintiff at threshold and the Court is required to invoke these provisions of law when the further continuation of the proceedings would be absurd.

16. In view of the express language of the provisions of Order VII Rule 11 of the Code and in the light of the ratio laid down in the judgments referred to supra, it can be safely concluded that the contention of the learned counsel for the petitioner that the plaint is liable to be rejected under Order VII Rule 11 of the Code on the ground of principle of *res judicata*, by any stretch of imagination,

can neither be sustained nor can be approved by this Court. Yet another contention advanced by the learned counsel for the petitioner that in view of the filing of I.A.No.3167 of 2007 by the plaintiff under Order VI Rule 17 of the Code for amendment of the relief portion as a suit for recovery of possession and declaration and dismissal of the same and confirmation of the said order by this Court in C.R.P.No.3913 of 2008 and the findings recorded therein, further continuation of the proceedings in the suit would be absurd and tantamounts to abuse of process of law and vexatious and cannot be permitted, in considered and definite view of this Court is also not sustainable and tenable. In view of the settled law that the pleadings in the plaint should be the criterion for consideration of the application under Order VII rule 11 of the Code, but not the defence set up by the defendants, the dismissal of I.A.No.3167 of 2007 and the confirmation of the same by this Court in C.R.P.No.3913 of 2008 by any stretch of imagination cannot be the basis nor can it be used as a foundation for maintaining the present application or for rejecting the plaint. In fact, in a suit for injunction, the only aspect, which requires to be examined, is possession as on the date of the suit.

17. As rightly pointed out by the learned counsel for the first respondent, the suit was instituted in the year 2004, the petitioner filed I.A. for amendment in the year 2007 and the same was dismissed in 2008 and C.R.P.No.3913 of 2008 was dismissed on 20.10.2008 and the present application was filed on 23.11.2012 and there is absolutely no plausible explanation forthcoming from the petitioner for such a delay. The said delay is certainly one of the grounds which disentitles the petitioner from claiming this extraordinary relief under Order VII Rule 11 of the Code.

18. A perusal of the order under revision vividly and candidly discloses that the learned Judge thoroughly and scrupulously considered all the aspects and assigned cogent and convincing reasons and arrived at a conclusion, which in the considered opinion of this Court is not in deviation and breach of any law. Another significant aspect, which needs mention at this juncture, is that unless the order impugned suffers from fundamental infirmity and jurisdictional error, the invocation of the jurisdiction of this Court under Article 227 of the Constitution of India is impermissible. In the facts and circumstances of the case, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the order under challenge does not suffer from any such jurisdictional error which warrants interference of this Court under Article 227 of the Constitution of India. The judgments cited by the learned counsel for the petitioner, in the facts and circumstance of the case, would not render any assistance in the present factual and circumstantial scenario of the case.

19. In the result, the Civil Revision Petition is dismissed. It is made clear that the Court below shall dispose of the suit as expeditiously as possible without being influenced by any of the observations made either in the impugned order or in the present order. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand dismissed.

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**A.V.SESHA SAI, J**

20<sup>th</sup> February, 2015

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L.R. copy to be marked.

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[\[1\]](#) (1977) 4 SCC 467

[\[2\]](#) 2007 (5) ALD 565

[\[3\]](#) 2014(4) ALD 63 (SC)

[\[4\]](#) AIR 1974 PATNA 153

[\[5\]](#) 2007(6) ALD 388 (DB)

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[\[7\]](#) 2013(5) ALD 72