

***HON'BLE SRI JUSTICE A.V. SESA SAI**

+CIVIL REVISION PETITION No.3243 of 2014

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% 16.04.2015

1. Yachamaneni Chandra Mohan Rao & another ...Petitioners

VERSUS

\$ 1. Edmala Narsamma @ Narsavva & 28 others ...Respondents

< **GIST:**

> **HEAD NOTE:**

!Counsel for Petitioners: Sri Bodduluri Srinivasa Rao

^Counsel for Respondents 1 & 2: Sri N. Ashok Kumar

? **Cases referred**

1. 2012 (6) ALD 36 (SC)
2. (2009) 1 Supreme Court Cases 689
3. AIR 1984 Orissa 187

4. AIR 1969 Supreme Court 971
5. AIR 1978 Punjab and Haryana 216
6. 2014 (2) ALD 149
7. AIR 1952 Punjab 190
8. (1980) 3 Supreme Court Cases 565
9. AIR 1926 Lahore 563

HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.3243 of 2014

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Date: April 16, 2015

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Between:

1. Yachamaneni Chandra

Mohan Rao & another. ... Petitioners

And

1. Edmala Narsamma @ Narsavva &

28 others. ... Respondents

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HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.3243 of 2014

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ORDER:

The application which is the genesis for the present revision filed under Article 227 of the Constitution of India is one under Order VII Rule 11 of the Code of Civil Procedure (CPC). In the present revision filed by the defendants 28 and 29 challenge is to the order dated 31.07.2014 passed by the Court of the Senior Civil Judge, Siricilla, dismissing I.A.No.219 of 2014 in O.S.No.139 of 2013.

2. The circumstances, leading to the filing of the instant revision are as infra:

Respondents 1 and 2 herein instituted the above mentioned suit against the petitioners and the other respondents herein for declaration of title and declaration of registered sale deeds standing in the name of the defendants as fraudulent, illegal, null and void and for perpetual injunction and mandatory injunctions in respect of the suit schedule property. In the said suit, defendants 28 and 29, who are the petitioners herein, filed the present I.A.No.219 of 2014 under the provisions of Order VII Rule 11 of CPC, praying the Court below to reject the plaint. Plaintiffs 1 and 2/respondents 1 and 2 herein opposed the said application by filing counter-affidavit. The learned Senior Civil Judge, Siricilla, by virtue of order dated 31.07.2014, dismissed the said application.

3. Calling in question the validity and the legal sustainability of the said order passed by the learned Senior Civil Judge, Siricilla, the present revision has been filed.

4. Heard Sri Bodduluri Srinivasa Rao, learned counsel for the petitioners and Sri N. Ashok Kumar, learned counsel for

respondents 1 and 2 apart from perusing the material made available before this Court.

5. Submissions/contentions of the learned counsel for the petitioners:

- (1) The order impugned in the instant revision is erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Order VII Rule 11 and Order IX Rule 9 of CPC.
- (2) The learned Judge failed to take into consideration the contents of the affidavit filed in support of the application and had the same been taken into account, the order under challenge would not have emanated.
- (3) In view of the dismissal of O.S.No.195 of 1982 filed by the plaintiffs/respondents herein for the same relief, the present suit is hit by the provisions of Order IX Rule 9 of CPC.
- (4) The learned Judge ought to have taken into account the aspect of filing of the present suit i.e., O.S.No.139 of 2013 based on the sale deed dated 23.12.1964 and seeking possession in the year 2003 and should have allowed the application.

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6. Submissions/contentions of the learned counsel for the respondents:

- (1) The order under challenge is in conformity with the provisions of Order VII Rule 11 of CPC.
- (2) There is no illegality nor any material infirmity in the order passed by the learned Senior Civil Judge,

Siricilla, and in the absence of the same, the present revision is not maintainable and the petitioners herein are not entitled for any relief from this Court under Article 227 of the Constitution of India.

- (3) The cause of action for instituting the present suit is different from the cause of action for filing the earlier suit i.e., O.S.No.195 of 1982 as such the petitioners herein are not entitled for any relief.
- (4) Since there are no ingredients of Order VII Rule 11 of CPC in the case of the petitioners herein, the plaint cannot be rejected.
- (5) The application for partial rejection of plaint at the instance of certain defendants only is not maintainable.

7. In support of his submissions and contentions the learned counsel for the respondents places reliance on the judgments in **Church of Christ Charitable Trust and Educational Charitable Society V . Ponniamman Educational Trust; State of Uttar Pradesh V . Jagdish Sharan Agrawal; Lingaraj Samantarayk and others V. Sri Sidhabaladevjew; Shivashankar Prasad Sah and another V . Baikunth Nath Singh and others; Manphool and others V. Surja Ram and others** and **Kasani Narsimulu V. Sathagowni Srinivas Goud and others.**

8. In the above background, now the issues that emerge for consideration of this Court in the present revision are:

- (1) Whether the order under revision is in conformity with the provisions of Order VII Rule 11 of CPC?

- (2) Whether the order impugned warrants any interference of this Court under Article 227 of the Constitution of India?

9. The provisions of law which are germane and relevant for the purpose of consideration of the issues involved in the present revision are Order VII Rule 11 and Order IX Rules 8 and 9 of CPC which read as under:

Order VII Rule 11 of CPC:

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 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.]

Order IX Rules 8 and 9 of CPC:

8. Procedure where defendant only appears:--- Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

9. Decree against plaintiff by default bars fresh suit.--- (1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.”

10. Under the provisions of Order VII Rule 11 of CPC, courts are authorized and empowered to reject plaints. Since this is a drastic remedy provided by the Code to non-suit the parties at threshold, the said power is required to be exercised with great amount of care, caution and circumspection and the same shall not be used in a routine and mechanical manner. It is settled law that when a serious dispute is raised by the parties with regard to the cause of action and limitation as to the dispute the same is to be resolved only after framing the issue and conducting trial on the said aspect, but not by rejecting the plaint. It is also a settled principle of law that while examining the application filed under Rule 10 or Rule 11

of Order VII, the Court has to take the averments in the plaint on their face value and the plaint cannot be rejected on the basis of written statement or the application filed under the said provisions of Order 7 Rule 11 of CPC. Unless a party applying for thoroughly and completely satisfies the Court and proves the existence of necessary ingredients of law, the exercise of the power under these provisions is impermissible to the Court.

11. The issues in the present case are required to be examined in the light of the above aspect. In the instant revision it is the contention of the learned counsel for the petitioners that the objection of the petitioners squarely falls under Order VII Rule 11 of CPC and the plaint is liable to be rejected in view of the mandatory provisions of Order IX Rule 9 of CPC. While elaborating the same, it is contended by the learned counsel that as the earlier suit, O.S.No.195 of 1982, filed by the same plaintiffs on the same foundation was dismissed for default and no steps were taken for getting the same restored, the present suit filed on the same basis cannot be permitted to be prosecuted in the teeth of provisions of Order IX Rule 9 of CPC.

12. On the contrary, it is the case of the plaintiffs/respondents herein that since the cause of action which compelled them to file the instant suit is different from the cause of action in O.S.No.195 of 1982, the said provisions of law cannot be pressed into service for non-suiting them.

13. In order to appreciate the same, this Court finds it appropriate to refer to the provisions of Order IX Rules 8 and

9 of CPC. According to Order IX Rule 8 of CPC where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof. As per Rule 9 of Order IX of CPC where a suit is wholly or partly dismissed under Rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside. Therefore, it is evident from the above provisions of law that when a suit is dismissed for default due to non-appearance of the plaintiff, the second suit on the same cause of action is not maintainable and is barred.

14. At this juncture, it may be appropriate to extract paragraph 5 of the plaint in O.S.No.195 of 1982 which dealt with the cause of action. The said paragraph reads as under:

“That the cause of action arose to the plaintiffs to institute this suit against the defendants on 5.9.1982 at Tangallapalli village of Sircilla taluk when the defendants came to the suit land and interfered with the possession of the plaintiffs over the suit land and withstanding green and black gram crops.”

It may also be appropriate to extract paragraph 3 of the plaint in O.S.No.195 of 1982 which reads as under:

“That the plaintiffs are owners, possessors, enjoyers and cultivators of the dry land bearing S.No.76 measuring 5A-24G situated at Tangallapalli Village of Sircilla taluk, (herein after called the suit property). The suit land was purchased by the plaintiff No.1's father Edamala Bhuchi Ramaiah and the plaintiff No.2 jointly from the defendants and other shareholders on 23.12.1954 for a consideration of rs.1,500/- executing on stamped sale deed worth of Rs.1.50 p. That the plaintiffs are in possession and enjoyment of the suit land since the date of purchase by paying land revenue regularly. The said stamped sale deed dated 23.12.1954 got impounded and certified by the Revenue Divisional Officer, Jagtial vide his proceeding No.F/3667/82 dated 17.08.1982. The plaintiff No.1's father and the plaintiff No.2 are in possession and enjoyment of the suit land continuously and after

the death of plaintiff No.1's father, the plaintiff No.1 and the plaintiff No.2 are in the continuous possession and their names were also recorded in the revenue records for the years 1964-65, 1965-66, 1966-67, 1967-68, 1970-71, 1976-77, 1977-78, 1980-81 and 1981-82 and the certified copies of pahani patrikas for the said years in respect of the suit land are filed herewith. The plaintiffs were also issued LR receipts for the years from 1970-71 to 1981-82 contained in the ryot pass is enclosed herewith. The plaintiffs were also issued record of right, ryot pass books by the Tahsil Officer, Sircilla, are also enclosing herewith. Thus the plaintiffs are the absolute owners, possessors, enjoyers and cultivators of the suit land by paying land revenue regularly. That the defendants have no rights whatsoever the suit land."

15. In the present suit i.e., O.S.No.139 of 2013 paragraph 4 of the plaint deals with cause of action and it reads as under:

"Cause of action arose to the suit, on 23.12.1964, when the fathers/grandfathers of defendants 1 to 24 got executed simple sale deed in favour of Edmala Budhi Ramaiah and Mallaiah, in respect of land, in Sy.No.76, to the extent of Ac.5.24 guntas, on 19.12.1966, when Budhi Ramaiah got executed Will deed in favour of plaintiff No.1, on 17.8.1982, when the simple sale deed got impounded, on 05.09.1982, when the fathers/grandfathers of defendants 1 to 24 got interfered in to suit land and a suit, in O.S.No.195 of 1982 was filed and on 15.07.1988, when the suit was dismissed for default, on 05.09.1996, when the Mandal Revenue Officer, Sircilla got mutated the name of plaintiff No.1, by entering the same in the mutation register, for the year 1996-97, vide Proceedings No.1962/1996, on 02.09.1995, when the defendant No.25 got obtained regd. Sale deed, on 30.03.1996, when the defendants 26 and 27 got obtained regd. Sale deed, vide Document No.833/1996 from the other batch of Lingam Pedda Yellaiah, s/o Lasmaiah and others, on 01.4.1996, when the same defendants 26 and 27 got obtained regd. Sale deed, vide Document No.846/1996, on 25.04.1997, when the defendants 26 and 27 ----- revenue appeal before R.D.O., Sircilla and on the R.D.O., Sircilla, without mentioning the date of orders, pronounced the judgment, by setting aside the orders of M.R.O., Sircilla, on 25.11.2002, when the plaintiff No.1 has preferred revision petition before District Collector, Karimnagar, on 25.07.2005, when the District Collector (ROR), Karimnagar was pleased to remand the matter to the Mandal Revenue Officer, Sircilla, for conducting of DENOVA enquiry, vide Revision Petition No.D1/7329/1999, on 25.02.2006, when Mandal Revenue Officer, Sircilla, by conducting DENOVA enquiry, by elaborately discussing the rights of the contesting parties got confirmed the earlier orders, vide Proceedings No.B/679/2005, on 27.01.2007, when the defendant No.26 got preferred second appeal

before Revenue Divisional Officer, Sircilla, vide Appeal No.D/60/2007, on 17.01.2011, when the Revenue Divisional Officer, Sircilla, without appreciating the DENOVA enquiry of M.R.O., Sircilla was allowed the appeal, on .02.2011, when the plaintiff No.1 has preferred revision petition, vide Revision Petition No.D1/602/2011, before Joint Collector, Karimnagar and during the pendency of revision petition, on 23.06.2011, the Mandal Revenue Officer, Sircilla, without taking into consideration of the pending of revision petition as well as pending of stay application got ordered, for mutation of the names of defendants 27 to 29, in respect of suit land, in Sy.No.76 to the extent of Ac.1.16 guntas, in the name of defendant No.26; Ac.1.10 guntas in the name of defendant No.27; Ac.1.14 guntas each in the names of defendants 28 and 29, for the pahanies from 2009-2010, 2010-2011, 2011-12 and 2012-13 though the plaintiff No.1 has been in physical possession and enjoyment of the suit land, on 05.01.2013, when the Joint Collector, Karimnagar got dismissed the revision petition and against which on writ petition No.18270/2013 has filed and the same is pending, before Hon'ble High Court of Judicature of A.P., at Hyderabad, on 28.7.2013, in spite of pending of the writ petition, by denying the title of the plaintiff No.1, the defendants 26 to 29 came to the suit land with an intention to convert the suit land into residential plots, with an intention to alienate the same with the sole intention to deprive the legitimate right of plaintiff No.1 in respect of the suit property.”

16. Paragraph 1 of the plaint narrates the circumstances leading to the dismissal of earlier O.S.No.195 of 1982 and to the extent of relevancy, the pleadings read as under:

“By taking into consideration of the enjoyment of the plaintiff No.1 on the spot, the revenue authorities got recorded the name of plaintiff No.1, as possessor to the extent of Ac.2.32 guntas, in Sy.No.76, in the pahani, for the year 1981-82. While it was so, in the month of September, 1982, some of the vendors of the father of plaintiff No.1 got interfered into the suit land, due to which, she along with her paternal uncle got filed a suit for declaration of title and perpetual injunction, in O.S.No.195 of 1982, on the file of District Munsiff, at Sircilla, against 1) Lingam Ellaiah, 2) Lingam Chandraiah, 3) Longam Rajaiah, 4) Longam Balaiah, 5) Longam Kotaiah, 6) Longam Lasumaiah and 7) Longam Narsaiah and in the mean while, due to the intervention of the elders, they had repented for their illegal acts and assured the plaintiff No.1 that, they would not interfere into suit land and got compromised with the plaintiff No.1 and her junior paternal uncle, in respect of the suit land and due to which, they did not proceed with the suit and moreover, from the beginning Edmala

Mallaiah, the junior paternal uncle was only dealing with the said suit, since he only engaged advocate and briefed the case, as such, she did not enquire, so as to know, what happened to her suit. In the mean while, on 12.05.2011, it was coming to her notice that, on 15.07.1988 itself, the above said suit was dismissed for default. However, the plaintiff No.1 has been in physical possession and enjoyment of the suit land, as usual like earlier, without any interruption, from any corner. Though the plaintiff No.1 has been in possession and enjoyment of the suit land, the reasons are best known to the revenue authorities only, they did not care to show the name of plaintiff No.1, in the possession column of pahanies, for the years from 1988-89 to 1996-97. It appears that, the village patwari of Thangallapalli revenue village, who was in enemical terms with the plaintiff No.1 though she has been in physical possession and enjoyment of the suit schedule 'A' land, he kept the possession column of the pahanies, as blank, for the years from 1988-89 to 1996-97. Due to which on 05.10.1996, the plaintiff No.1 has made her application with the District Collector, Karimnagar, with a request to issue mutation proceedings, in her name in respect of suit schedule 'A' land in Sy.No.76 to the extent of Ac.2.32 guntas situated at Thangallapally village of Sircilla Mandal, Karimnagar, as well as issue passbook and title deed in her name. By responding to the above letter, the then District Collector, Karimnagar was pleased to forward the same to the M.R.O., Sircilla, for issuing of ROR proceedings, as per the procedure as laid down in the R.O.R. Act. By duly observing the procedure as laid down under ROR Act, the then Mandal Revenue Officer, Sircilla got validated the simple sale deed, dt.23.12.1964 and mutated the name of plaintiff No.1 vide Proceedings No.1962/96 and her name was recorded in the mutation register for the year 1997-98 and subsequently the revenue authorities got issued pass book and title deeds, by duly collecting stamp duty of Rs.150/- and registration fee of Rs.50/- vide challan No.1789 and 1790 respectively, on 29.03.1997. By obtaining the pass book and title deed, as usual like earlier, the plaintiff No.1 has been cultivating the above said land without any interruption from any corner."

17. The principle underlying Order IX Rule 9 is that no one shall be vexed twice with the same cause of action and it is also a settled law that this rule does not prohibit the plaintiff from instituting a fresh suit on different cause of action as per the principles laid down in **Shivashankar Prasad Sah and another V. Baikunth Nath Singh and others** (4 supra) and

Raj Kumar and others V. Mutsaddi Lal and others. It is also a settled law that dismissal of suit under Order IX Rule 8 of CPC bars fresh suit in respect of the same cause of action. It is also a settled law that the operation of this rule is confined to the cases where the second suit is brought for the same subject and on the same cause of action and it does not preclude fresh suit if a cause of action is separate and distinct. While considering whether the cause of action in the subsequent suit is or is not the same as the cause of action in the previous suit, the test to be applied is “are the causes of action in the two suits in substance and not technically identical” as laid down in **M/s. Parasram Harnand Rao V. M/s. Shanti Parsad Narinder Kumar Jain and another.** It is also to be noted that as to the identity of cause of action one workable test though not conclusive is whether the same evidence would support the claim in both the suits and if the reply is affirmative, a fresh suit will be barred and if it is negatived, a fresh suit will lie. It is also settled law that the fact that the mode of relief claimed in the subsequent suit is different than claimed in the previous suit, it will not be a ground for refusing to apply the bar of Order IX Rule 9 of CPC as held in **Aziz Din V. Moti Ram and others.** At the same time, there is absolutely no dispute with regard to the principles laid down in the judgments referred to by the learned counsel for the respondents and in fact the Court below had no occasion to deal with the same.

18. There is absolutely no dispute that both the suits are eventually for the reliefs of declaration of title and injunction in respect of the same subject property. The distinction is subsequent developments and the relief pertaining to the revenue entries. The instant application is for rejection of plaint under Order VII Rule 11 (d) of CPC. It is the case of the petitioners herein that in view of the provisions of Order IX

Rule 9 of CPC the present suit is barred, since the earlier suit i.e., O.S.No.195 of 1982 filed by the plaintiffs herein on the same foundation and cause of action was dismissed for default. It is also the contention of the learned counsel for the petitioners that the cause of action referred to include any cause of action flowing from the main cause of action.

19. A perusal of the order under revision shows that the learned Senior Civil Judge, Siricilla, taking into consideration the averments at page 9 of the plaint held that the objection is unsustainable and in fact did not discuss in detail the basis and foundation of the earlier suit and the cause of action set out therein and the effect of dismissal of the said suit O.S.No.195 of 1982 and the impact of provisions of Order IX Rule 9 of CPC on the present suit and the Court below had also no occasion to consider the principles laid down on the issue in the above referred judgments. In fact, no exercise was undertaken by the Court below in the light of the principles laid down in the authoritative pronouncements. Therefore, this Court, after anxious and thoughtful consideration and taking into consideration the totality of the circumstances deems it appropriate to remand the matter for fresh consideration to the Court below.

20. For the aforesaid reasons, this revision is allowed, setting aside the order dated 31.07.2014 passed by the Court of the Senior Civil Judge, Siricilla, in I.A.No.219 of 2014 in O.S.No.139 of 2013 and consequently the said I.A.No.219 of 2014 is remanded to the Court of the Senior Civil Judge, Siricilla, Karimnagar District, for fresh consideration in the light of the observations made supra and in the light of the judgments referred to above after giving opportunity of hearing to all the stakeholders within two months from the

date of receipt of a copy of this order.

21 . Pending miscellaneous petitions, if any, shall stand dismissed in consequence. No order as to costs.

A.V.SESHA SAI, J

Date: April 16, 2015.

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HON’BLE SRI JUSTICE A.V. SESA SAI

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Date: April 16, 2015

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