

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

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For the State of Telangana and the State of Andhra Pradesh

MAIN CASE NO: A.S.No.520 OF 2015

Between:

Smt Savaravilli Adamma and others

.. Appellant(s)

And

Smt Sompalli Vanaja and others

.. Respondent(s)

DATE OF JUDGMENT PRONOUNCED: 27.07.2015

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

1. Whether Reporters of Local news papers Yes/No
may be allowed to see the Judgments?
2. Whether the copies of judgment may be Yes/No
marked to Law Reporters/Journals
3. Whether Their Ladyship/Lordship wish to Yes/No
see the fair copy of the Judgment?

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

A.S.No.520 OF 2015

JUDGMENT :

The plaintiffs filed this appeal challenging the order dated 20.04.2015 in G.R.No.14679 of 2014 passed by the Principal District Judge, Visakhapatnam rejecting the plaint by exercising power under Order VII Rule 11(d) CPC.

2. The plaintiff/appellant filed the suit for different reliefs as mentioned in para VI of the plaint, which are as follows:

- a. *For cancellation of the sale deed bearing No.2665/94, dated 20.07.1994.*
- b. *For cancellation of the sale deed bearing No.2683/94, dated*

22.07.1994.

- c. *For cancellation of the sale deed bearing No.2684/94, dated 22.07.1994.*
- d. *For cancellation of the sale deed bearing No.1594/13, dated 26.06.2013.*
- e. *Send a copy of the decree to the sub registrar, Anandapuram, Visakhapatnam to make a note of the cancellation of the documents in their books of the office.*
- f. *For a permanent injunction restraining the defendants their men, agents, officials and whoever acts on their behalf from ever interfering with the plaintiffs peaceful possession and enjoyment of the plaint schedule property in any manner whatsoever including encroachment into the plaint schedule property.*

3. The office raised several objections with regard to the bar of limitation and after hearing argument, the Court passed an order on 20.04.2015 observing that the suit by the plaintiff for cancellation is maintainable by placing reliance in **Shaik Mallika v. Borre Deva Munemma and another**. However, in para 6 of the order, the trial Court adverted to Article 59 of the Limitation Act, 1963 and ultimately concluded that the relief of cancellation of sale deeds is barred by limitation except the sale deed executed in the year 2013 (vide relief in para VI (d) of plaint) and rejected the plaint under Order VII Rule 11(d) CPC.

4. Aggrieved by the said order, the present appeal is preferred by the unsuccessful plaintiffs on various grounds mainly contending that the limitation for cancellation of a document or instrument is covered by Article 59 of the Limitation Act which starts from the date of knowledge of the plaintiff about execution of the said document. But the trial Court rejected the plaint on the premise that the limitation starts from the date of execution of the document and committed an error.

5. Learned counsel for the plaintiffs while advancing the arguments would submit that the language used under Order 7 Rule 11(d) CPC is clear that barred by any other law means any power to entertain the suit under any other law, but not the Limitation Act. Moreover, the limitation of three years starts from the date of knowledge and not from the date of execution of the document in view of Article 59 of the Limitation Act. Hence, the order under challenge is

erroneous and prayed to set aside the order passed by the trial Court.

6. Learned counsel for the appellant has drawn the attention of this Court to several judgments reported in (1) **Kamala and others v. K.T.Eshwara sa and others**, (2) **Popat and Kotecha Property v. State Bank of India Staff Association**, (3) **C.Natrajan v. Ashim Bai and another**, and **Hardesh Ores (P) Ltd. v. Hede and Company** in support of his contention. Before advert to the law, in view of various grounds, it is appropriate to advert to Order 7 Rule 11 CPC, which runs as follows:

“Rejecting 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”;*

The trial Court considering Clause (d) of Order 7 Rule 11 held that the suit claim is barred by limitation.

7. According to Article 59 of the Limitation Act, the limitation to cancel or set aside the instrument or decree or for the rescission of a contract is three years which starts from the date when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded ‘first become known’ to him.

8. Thus a suit for cancellation or set aside a decree to be filed within three years from the date when the facts entitled the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.

9. Here the pleadings in the plaint more particularly, in para 4 the plaintiff averred as follows:

“..When their evil designs were not materialized, the defendants herein filed a suit in O.S.No.12 of 2014 on the file of II Additional District Judge, Visakhapatnam with all false and frivolous allegations with the aid of false and fabricated documents then only the plaintiffs could able to know the existence of the false and frivolous sale deeds and that the said documents are nominal, sham and collusive and does not convey any right title, interest over the suit schedule property and that if the documents are left outstanding may cause serious injury and effect the plaintiffs legal remedies.....”

10. From these averments, it is clear that the plaintiff came to know existence of the false and frivolous sale deeds only when O.S.No.712 of 2014 was filed by the defendants before the II Additional District Judge, Visakhapatnam. The present suit is filed in the year 2014 itself. If the language used in Col.3 of Article 59 of the Limitation Act is applied, the limitation only starts from the date when the execution of the documents are known to the plaintiffs.

11. In **Hardesh Ores (P) Ltd's case (5th supra)** the Apex Court in para 25 of the judgment held that the language used in Order 7 Rule 11(d) includes law of limitation as well. When the suit is barred by limitation, taking into consideration of the facts pleaded in the plaint, the suit can be dismissed.

12. In another Judgment in **C.Natrajan's case (4th supra)** the Apex Court reiterated its earlier judgments. In **Popat and Kotecha Property's case (3rd supra)** , the Apex Court in para 25 at the end i.e last three lines, held, that the statement in the plaint without addition or subtraction must show that it is barred by any law to attract application of Order 7 Rule 11.

13. In **Kamala and others' case (1st supra)** in paras 21 and 22 held as follows:

21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than

one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision.

14. In view of the principles laid down in the above judgments, it is the consistent view of the Supreme Court that the bar of suit claim can be accepted basing on the facts pleaded in the plaint, without adding or subtracting anything to the averments of plaint.

15. In recent judgment reported in **P.V.Guru Raj Reddy, Rep. by GPA Laxmi Narayan Reddy and another v. P.Neeradha Reddy and others etc.** a similar question came before the Apex Court for proper consideration and the Supreme Court held as follows:

“Similarly in Original Suit No.72 of 2002, according to the plaintiffs, they could come to know of the sale deed dated 31.08.1979 executed in favour of the plaintiff No.2 and the defendant No.3 only in the year 1999 immediately where after they had issued the legal notice dated 20.12.1999. According to the plaintiffs it is only subsequently that they came to know of sale of half of the scheduled property in favour of the defendant No.5. Accordingly, they had held the Original Suit No.72 of 2002 claiming the following reliefs:

- a. *For a declaration that the schedule property is the property of the 2nd plaintiff and for possession of the suit schedule property from the defendants to the 2nd plaintiff.*
- b. ***For cancellation of the sale deed, dated 31.08.1979 jointly executed in the name of the 2nd plaintiff and the 3rd defendant, so far as the 3rd defendant is concerned.***
- c. *For cancellation of the sale deed, dated 10.02.1999, executed in the*

name of the 5th defendant.

- d. *For permanent injunction restraining the defendants, their men and others on their behalf from further alienating the schedule property in favour of other persons.*
- e. *For costs.”*

16. In the facts of the above judgment, the relief under Clause (d) is for cancellation of the sale deed dated 31.08.1979 jointly executed in the name of the 2nd plaintiff and the 3rd defendant. So far as the 3rd defendant is concerned, immediately after coming to know about execution, the plaintiff got issued legal notice dated 20.12.1999 and filed the suit in the month of July, 2002. Therefore, the suit is within time, on the face of pleadings. However, while disposing of the matter, the Apex Court observed that knowledge about the execution of the document is to be proved by adducing evidence and rejection of plaint at the threshold is erroneous.

17. In the present case, the limitation for cancellation is three years which runs from the date of knowledge and not from the date of execution of the document. The proof of knowledge is a matter of evidence and it cannot be inferred at the stage of registration of the plaint basing on the averments that the claim of the plaintiff for cancellation of the sale deeds is barred by limitation. If the principle laid down in **P.V.Guru Raj Reddy's case (6th supra)** is applied to the present facts of the case, when the fact is required to be proved by adducing evidence, rejecting plaint under Section 7 Rule 11(d) CPC at the threshold is erroneous, as the averments in plaint as to their knowledge about Transfer of Property will have to be accepted as correct for the purpose of consideration of application under Order VII Rule 11 of CPC.

18. Therefore, rejection of plaint by the trial Court exercising power under Order 7 Rule 11(d) of CPC at the threshold is erroneous and the same is hereby set aside directing the trial Court to register the plaint.

19. While deciding the question of limitation, the trial Court discussed about the very maintainability of the suit by applying principle laid down in a judgment reported in **Shaik Mallika v. Borre Deva Munemma and another** and recorded a finding that the suit is maintainable. This finding is premature and unwarranted. Therefore, while setting aside the finding as to the maintainability of the suit, I find that it is a fit case to remand the matter to the trial Court by exercising power under Order 41 Rule 23 CPC directing the trial Court to register the plaint as suit and it is left open to the parties to the suit to raise any pleas which are available under law after registration of the plaint.

20. The finding or observation if any made hereinabove are limited for the purpose of deciding the appeal, it will have no bearing on disposal of suit on its remand. Hence, the trial Court has to decide the suit notwithstanding the findings or observations made herein above.

21. With the above directions, the appeal is allowed. There shall be no order as to costs.

22. Pending miscellaneous petitions in this appeal, if any, shall stand dismissed.

M.SATYANARAYANA MURTHY, J

27.07.2015

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HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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