

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2831 of 2015

ORDER:

Aggrieved by an order dated 12.06.2015 passed in I.A.No.88 of 2015 in O.S.No.59 of 2006 on the file of the Additional Senior Civil Judge, Karimnagar, wherein and whereunder an application filed under Order VII Rule 11 of C.P.C. to reject the plaint was dismissed, the present Civil Revision Petition is filed under Article 227 of the Constitution of India,

The facts in issue are as under:

Respondent No.1/plaintiff herein filed O.S.No.59 of 2006 against the revision petitioners and respondent Nos.2 and 3 herein seeking declaration of title and perpetual injunction in respect of the suit schedule property alleging that respondent No.1/plaintiff purchased the said property from the revision petitioner No.1 on 06.06.1997 for a sum of Rs.1,50,000/- and when he presented the document for registration, the same was not registered and a pending registration number was given on the ground that respondent No.1/plaintiff paid deficit stamp duty. Respondent No.2/Sub-Registrar referred the matter to the Collector for determination of the market value of the said property. Further, the District Registrar of Assurances determined the market value of the property and ordered for payment of deficit stamp duty of Rs.66,300/- which was informed to respondent No.1/plaintiff through letter dated 27.10.2014. On a representation made by respondent No.1/plaintiff, her name was mutated in the municipal records in respect of the suit schedule property. Thereafter, respondent No.2/Sub-Registrar in collusion with revision petitioner No.1/defendant No.1 is said to have collected the stamp duty from him and returned the said document to him. Questioning the action of respondent No.2/Sub-Registrar in handing over of the document to the revision petitioner No.1 the respondent No.1/plaintiff approached this Court. By an order dated 21.11.2014 passed in W.P.No.3295 of 2005 this Court allowed the writ petition. The operative portion of the order is as under:

“Writ Petition is allowed by declaring that without registration return of

pending document No. P.459/1997 to the third respondent therein by the second respondent is illegal and without jurisdiction and the second respondent is directed to issue notice to third respondent calling upon him to return the document forthwith within a period of two weeks from the date of receipt of a copy of the said order and the third respondent returns document No.P.459/1997 within two weeks therefrom to second respondent. The second respondent on receipt of document proceeds in the matter in accordance with law by issuing notice to both parties.”

Aggrieved by the said order, revision petitioners herein preferred a writ appeal and the same is pending. Without submitting the document before the Sub-Registrar, the revision petitioners filed I.A.No.88 of 2015 under Order VII Rule 11 of C.P.C. for rejection of the plaint. After analyzing the material on record, the trial Court dismissed the said petition. Challenging the same the present revision is filed.

Learned counsel for the petitioners while contending that the plaint itself is liable to be returned under Order VII Rule 11 C.P.C. took the Court through clause (a) and (d) of Rule 11 of Order VII C.P.C. in support of his argument. In order to examine the contention of the learned counsel for the petitioners it is necessary to extract relevant provisions namely Order VII Rule 11 (a) and (d) which reads as under:

Order VII Rule 11 - Rejection of plaint - Plaint shall be rejected in the following cases:

- (a) where it does not disclose a cause of action;
- (b) xxx
- (c) xxx
- (d) where the suit appears from the statement in the plaint to be barred by any law;

A plain reading of clause (d) of Rule 11 of Order VII C.P.C. makes it clear that if 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 petitioner has to satisfy the Court that filing of a suit is barred under the extant enactment either expressly or by implication. In ***Y.Sri Ramulu v. K.Venkatesham*** this Court held that a statute barring the suit is distinct from absence of a right of the plaintiff to claim relief under the

particular enactment. It has been held by this Court that 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.

The Court held that it would be unsafe/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 pre-trial 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. As no provision is brought to the notice of this Court to show as to how institution of the suit is barred by any law, the ground raised by the learned counsel for the petitioners with regard to the rejection of plaint in view of clause (d) of Rule 11 of Order VII C.P.C. cannot be accepted.

Insofar as clause (a) of Rule 11 of Order VII C.P.C. is concerned the same relates to the rejection of plaint where it does not disclose any cause of action. Learned counsel for the petitioners submits that the averments in the plaint do not disclose any cause of action against any of the defendants. I am afraid the said argument cannot be accepted for the reason that in the plaint, it has been categorically stated that defendant No.4/Sub-Registrar handed over the document which is pending for registration to defendant No.1 in collusion with each other and defendant Nos.1 to 3 tried to occupy the suit schedule property by dispossessing the plaintiff. The said action of the defendants made the plaintiff to file the above suit. Therefore, it cannot be said the cause in the suit is illusory and non-existing.

The second argument which was advanced by the learned counsel for the petitioners is that notice under Section 80 C.P.C. which is mandatory in nature was not issued before filing suit though defendant Nos.4 and 5/Sub-Registrar and Municipal Corporation are government servants. In support of his contention, he placed on record the judgment of this Court in **Gangappa**

Gurupadappa Gugwad v. Rachawwa and others.

On the otherhand, learned counsel for respondent No.1/plaintiff would submit that his relief is mainly directed only against defendant Nos.1 to 3 and even if it is ultimately held that a notice under Section 80 C.P.C. is necessary, defendant Nos.4 and 5 would get deleted from the array of defendants and his relief against defendant Nos.1 to 3 would not be defeated. According to him, the issue as to whether a notice under Section 80 C.P.C. is necessary or not cannot be gone into at this stage since the suit which was filed in the year 2006 is as its fag end.

It is to be seen from the record that the suit was filed in the year 2006 and respondent Nos.2 and 3 herein who are government officials filed their written statements, contesting the matter. Till today no objection has been raised by them with regard to issuance of notice under Section 80 C.P.C. is concerned. When the case is posted for cross examination of DW.1, the revision petitioners, who are the contesting private parties, filed I.A.No. 88 of 2015, raising an objection with regard to non-issuance of notice under Section 80 C.P.C. to the official defendants before filing of the suit. From the record it is clear that the government servants who were made as defendant Nos.4 and 5 never raised such an objection.

As stated earlier, no objections have been raised by any of the defendants from 2006 till 2015. It is also to be noted that no reasons are forthcoming as to why there was such a delay in raising an objection and why it was raised after the closure of plaintiff's evidence. The record reveals that the plaintiff has already closed her evidence and the case is coming up for cross examination of DW.1. Instead of concluding the evidence, defendant Nos.1 to 3 came forward with the application to reject the plaint under order VII, Rule 11 (d) CPC and also as to the maintainability of the suit for non-issuance of the notice under Section 80 CPC. Further, the present I.A. came to be filed when the petitioners herein failed to comply with the orders passed in W.P.No.3295 of 2005.

In ***C.Arjun Rao v. T.Rammohana Rao and another*** this Court held as under:

“10. As stated supra, the 1st defendant filed I.A. No. 1337/1998 under Order VII Rule 11 (d) to reject the plaint but the similar application was dismissed on 15/04/1999. Thereafter, after closure of the evidence of the plaintiff, the suit

underwent several adjournments for adducing evidence by the defendant and when the suit was adjourned finally on 22/12/2001, a conditional order was passed by the trial court that if the 1st defendant fails to adduce evidence, it will be taken that he has no evidence then only the 1st defendant came forward with the instant application to reject the plaint under Order VII, Rule 11 (d) CPC relating to the maintainability of the suit for nonissuance of the notice under Section 80 CPC. The said conduct of the revision petitioner is not bona fide and his conduct clearly shows that he has waived the alleged right of notice under Section 80 CPC and, therefore, he cannot be permitted to take the plea of rejection of the plaint on the ground of nonissuance of notice under Section 80 CPC. Though, there is some force in the said contention, it cannot be said that as to whether the petitioner has waived a notice under Section 80 CPC or not but it has to be decided based on the evidence adduced by both the parties alone and, therefore, the plaint cannot be rejected as rightly held by the trial Court. The question as to whether the plaintiff has committed the said acts in his official capacity or in his individual capacity cannot be decided on the said petition filed by the 1st defendant but the said question can only be examined during the course of the trial.

A three Judges Bench of the Apex Court in [SUPREME COOPERATIVE GROUP HOUSING V. M/s. H.S. NAG AND ASSOCIATES \(P\) LIMITED](#) held that the rigour of notice under Section 80 CPC was softened by CPC 1976 [Amendment Act](#) in directing, in appropriate case, post suit notice. Therefore, it has to be decided that whether [Section 80](#) notice is mandatory, it can be waived and the said waiver has to be decided by the conduct of the party after a regular trial only.

In view of the judgments referred to above and as defendant Nos.4 and 5, who are government servants have not challenged the issuance of notice under Section 80 C.P.C. I am of the opinion that the issue as to whether the defendant Nos.4 and 5 have waived their right of notice under Section 80 C.P.C. has to be decided after completion of the trial alone and the plaint cannot be returned as sought for by defendant Nos.1 to 3 under Order VII Rule 11 (d) CPC.

For the aforesaid reasons, I do not see any merits in the Civil Revision Petition and the Court below has rightly rejected the said application of the revision petitioners herein.

Accordingly, the Civil Revision petition is dismissed. There shall be no order as to costs. As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed.

C. PRAVEEN KUMAR, J

29.07.2015

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