

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

A.S.No.166 of 2005

ORDER:

The plaintiff in C.F.No.777 of 2004 on the file of District Judge, Nellore preferred this appeal against the order of rejection of plaint by exercising the power under Order VII Rule 11 CPC. The appellant was the plaintiff and the respondents were the defendants before the trial Court and they are here-in-after referred as plaintiff and defendants for convenience.

2. The plaintiff filed the suit for declaration stating that he is the sole trustee of Sri Bhagavan Sri Venkaiah Swamy Ashram situated at Golagamudi Village and he alone is competent to manage wholly the schedule property and for consequential permanent injunction restraining the defendants from interfering with his trusteeship in maintaining the Ashram affairs and its properties, and to direct the defendants to deliver the office of the plaintiff schedule Ashram and permit him to operate the bank account, which stands in the name of Ashram.

3. Based on several allegations made in the plaint, at the threshold, the office took an objection about the maintainability of the suit. After hearing the counsel for the plaintiff, the trial Court was not satisfied with the explanation of the learned counsel for the plaintiff regarding maintainability of the suit and passed the decree and judgment dated 07.02.2005, whereby rejected the plaint on the ground of principle of constructive *res judicata* in view of filing of earlier suits O.S.No.389 of 1990 and O.S.No.45 of 1993 on the file of I Additional District Judge, Nellore and other suit O.S.No.1 of 1995 seeking relief of framing a scheme for the said Ashram.

4. At the end of para No.4 last four lines, a stray observation is made by the trial Court that the plaintiff has no cause of action at all.

5. Aggrieved by the judgment and decree passed by the trial Court, the present appeal is preferred on various grounds.

6. During the course of hearing, the contention of the learned counsel for the appellant is that rejection of the plaint on the ground that the claim is barred by constructive *res judicata* is not within the limits of Order VII Rule 11 CPC and the stray observation of lack of cause of action, is not a ground to reject the plaint at the threshold.

7. Whereas the learned counsel for the implead petitioner in A.S.M.P.No.844 of 2015 would contend that when there is no cause of action for the suit, the plaint can be rejected by exercising the power under Order VII Rule 11 CPC and supported the order of trial Court in all respects.

8. Considering the rival contentions and on perusing the material available on record, the points that arise for consideration are as follows :-

1. Whether rejection of plaint on the ground that the claim is barred by constructive *res judicata* be sustained ?
2. Whether the plaint discloses cause of action for filing the suit, if not, whether the rejection of plaint on the ground of want of cause of action be sustained ?

9. **POINT NO.1** :- The judgment and decree under challenge before this Court evidently shows that earlier there were suits between the same parties i.e., O.S.No.45 of 1993 on the file of I Additional District Judge, Nellore and O.S.No.1 of 1995 on the file of District Judge, Nellore filed for framing a scheme for the said Ashram and other suit O.S.No.389 of 1990 on the file of I Additional District Munsif, Nellore is also in respect of the same Ashram. Those suits were decided on the scheme of management was framed by this Court in the appeal. Therefore, the relief claimed in the plaint is barred by principles of constructive *res judicata* according to trial Court.

10. The plea of *res judicata* is not a pure question of law. It is a mixed question of fact and law and that too rejection of plaint is governed by Order VII Rule 11 CPC, under few circumstances. For better

appreciation, Order VII Rule 11 CPC is extracted hereunder :-

“11. 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;
- [(c) Where the relief claimed is properly valued, but the plaint is written on paper insufficiently stamped, and the plaintiff does not make good the deficiency within the time, if any granted by the Court.]
- (d) where the suit appears from 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.”

11. Admittedly, the trial Court rejected the plaint only on the ground that the claim is barred by principle of constructive *res judicata* without touching the other ground except making a bald observation that the plaintiff has no cause of action.

12. The reasons recorded by the trial Court that the claim in plaint is barred by principles of *res judicata* is not within Order VII Rule 11 CPC since it is not pure question of law and it is a mixed question of fact and law and the same cannot be a ground for rejection of plaint under Order VII Rule 11 of CPC at the threshold.

13. In a recent judgment reported in **Kamala v. K.T. Eshwara Sa**^[1], wherein, the Apex Court, in paragraphs 22 and 23 of the said judgment, held as follows:

“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.

23. The principles of *res judicata*, when attracted, would bar another suit in view of Section 12 (*sic 11*) of the Code. The question involving a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit may be taken up either as a preliminary issue or at the final hearing, but, the said question cannot be determined at that stage.”

14. From the principles laid down in the above judgment, it is apparent that the plea of *res judicata* is not a question of law and it is a mixed question of fact and law, which is required to be established only by adducing evidence.

15. At the stage of registering the plaint as suit, the Court shall not add or subtract anything to the plaint and based on the pleadings alone, the Court can decide whether the plaint can be registered as a suit or not within the boundaries under Order VII Rule 11 CPC. But, the trial Court rejected the plaint, transgressing its limits under Order VII Rule 11 CPC and held that the claim of the appellant is barred by principle of *res judicata*. Therefore, at the stage of registration of plaint as suit, rejection of plaint applying principle of *res judicata* is impermissible and recording of such finding that the claim of the plaint is barred by principles of constructive *res judicata* is unwarranted at this stage. Therefore, the rejection of plaint under Order VII Rule 11 CPC on the ground that the claim in the plaint is barred by constructive *res judicata* is hereby set aside.

16. **POINT NO.2** :- While passing the decree and judgment at the end of para No.4, a stray observation is made, which reads as follows:-

“As no cause of action at all, therefore, I hold that the plaint is liable to be rejected”.

17. In fact the office did not take any objection about maintainability of

the suit in the absence of any cause of action but only objection taken by the Court is about maintainability of the suit in view of the earlier litigation between the same parties.

18. According to Order VII Rule 11(a) CPC, where the plaint did not disclose the cause of action, the plaint can be rejected. The cause of action is a bundle of facts, which gives the plaintiff right to seek relief against the defendant. Every fact, which is necessary to prove to obtain a decree, should be set out in clear terms. The cause of action must include some Act, but no cause of action can be possibly accrued.

19. In the case on hand, the allegations made in the plaint discloses the cause of action, but even without taking any objection the trial Court recorded a finding that there is no cause of action for the plaintiff to maintain the suit. The observation extracted above is erroneous and it is without any information to the plaintiff, affording opportunity to explain. Therefore, the observation made by the trial Court regarding rejection of plaint on the ground that the plaint did not disclose the cause of action, is erroneous.

20. Hence, the rejection of plaint by the trial Court is apparently an error on the face of record and it is liable to be set aside. Accordingly, the point is decided in favour of the plaintiff and against the defendants.

21. In view of the foregoing discussion, the decree and judgment under challenge passed in C.F.No.777 of 2004 dated 07.02.2005 is hereby set aside directing the District Court to register the plaint as suit.

22. Accordingly, the Appeal Suit is allowed. No costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date : 11.08.2015
ssp

[\[1\]](#) 2008(12) Supreme Court Cases 661