

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.R.P.No.4095 of 2014

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ORDER:

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Defendant No.1 in O.S.No.165 of 2012 on the file of the Court of the Additional Senior Civil Judge, Karimnagar is the petitioner in the present revision filed under Article 227 of the Constitution of India.

2. In the present revision, challenge is to the order dated 18.9.2014 passed by the said Court in I.A.No.66 of 2014 filed by the petitioner herein under the provisions of Order 7 Rule 11(d) of CPC.

3. Heard Sri P.Sajan Kumar, learned counsel for the petitioner and Sri N.Ashok Kumar, learned counsel for plaintiff/1st respondent herein.

4. The 1st respondent herein instituted O.S.No.165 of 2012 on the file of the Court of Additional Senior Civil Judge, Karimnagar against the petitioner herein and the respondents 2 to 4 herein for partition and separate possession of 1/7th share in the suit schedule land. The suit schedule property is agricultural dry land admeasuring Ac.1.10 guntas in Sy.No.47/B and Ac.0-12 ½ guntas in Sy.No.47/D, having compact block totaling Ac.1-22½ guntas situated at Seetarampur village, Karimnagar Mandal, Karimnagar district.

5. Defendants 1 and 2 filed a written statement resisting the said suit. The 1st defendant filed the present I.A.No.66 of 2014 under the provisions of Order 7 Rule 11(d) of CPC seeking rejection of plaint. The said application was resisted by the plaintiff/1st respondent herein by filing counter. The learned Additional Senior Civil Judge, Karimnagar by way of order dated 18.9.2014 dismissed I.A.No.66 of 2014. As against the said order passed by the Additional Senior Civil Judge, Karimnagar, the present CRP has been filed.

6. It is contended by the learned counsel for the petitioner that the order under challenge in the present revision is erroneous, contrary to law and is opposed to very spirit and object of the provisions of Order 7 Rule 11 of CPC and therefore, the same is liable to be set aside.

7. It is the submission of the learned counsel for 1st respondent that the grounds urged in the affidavit filed in support of the petition do not satisfy the ingredients of Order 7 Rule 11 of CPC and the impugned order does not suffer from any jurisdictional error, which warrants interference of this Court under Article 227 of the Constitution of India.

8. In the above background, the issues that emanate for consideration of this Court are;

- (1) Whether the order under challenge is in conformity with the provisions of Order 7 Rule 11 of CPC?
- (2) Whether the impugned order warrants any correction by this Court under Article 227 of the Constitution of India?

9. In order to appreciate the rival contentions in the matter and in order to arrive at just conclusion, it may be apt and appropriate to refer to the provisions of Order 7 Rule 11 of CPC, which read as under:

“Order VII Rule 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 ;
- (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 sub-rule (2) 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.]”

10. Order 7 Rule 11 of CPC empowers the Courts to decide the applications under the contingencies stipulated therein. The said power which empowers the Courts to non-suit a person at the threshold is required to be exercised with great care, caution, circumspection, and very sparingly. While dealing with the provisions of Order VII Rule 11 of the Code of Civil Procedure, the Court has to take the pleadings in the plaint on their face value and the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. Unless a party applying for thoroughly and completely satisfies the court and proves the existence of necessary ingredients of law, the exercise of power under these provisions is impermissible to the Court. The issues in the present revision are required to be tested and examined in the light of the above aspects.

11. In the affidavit filed in support of I.A.No.66 of 2014, the petitioner herein stated that according to family settlement between the parties, the plaintiff was already allotted a share in the joint family property and accordingly, mutation was also effected in the revenue records and pattadar passbooks and title deeds were also issued in respect of the shareholders by the revenue authorities. The petitioner herein also stated that the plaintiff/1st respondent herein alienated her property to one Konda Srinivas and Jilla Prasad through a registered sale deed bearing document No.1839 of 2008 dated 24.3.2008. The petitioner

herein also stated that plaintiff/1st respondent herein did not approach the Court with clean hands and suppressed all the material facts.

12. Resisting the averments in the affidavit filed in support of the application, the 1st respondent herein filed a counter, denying the averments.

13. The learned Senior Civil Judge, after noting the contentions of the parties and after thoroughly and meticulously considering the entire material on record and by taking into consideration the principles laid down in the judgment rendered by this Court and after taking into account the parameters of Order 7 Rule 11 of CPC and by assigning cogent and convincing reasons, dismissed the application filed by the petitioner herein.

14. Admittedly, in the present case, the petitioner herein filed the application under Order 7 Rule 11(d) of CPC. Under the said provision of law, the Court can reject the plaint, where the suit appears from the statement in the plaint to be barred by any law. In the instant case, the petitioner herein is not successful in pointing out any law, which bars institution of the suit. It is settled law that unless the order impugned suffers from patent perversity and jurisdictional error, the invocation of jurisdiction of this Court under Article 227 of the Constitution of India is impermissible.

15. For the aforesaid reasons, the CRP is dismissed. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 22.4.2015
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Between:

Zafar Hussain

... Petitioner

and

Ameena Bee @ Zaina Bee & others.

... Respondents