

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.3564 of 2013

ORDER:

This Revision Petition is filed challenging the order dt.04-04-2013 in I.A.No.1609 of 2012 in O.S.No.311 of 2012 of the I Additional District Judge, Ranga Reddy District at L.B.Nagar, Hyderabad.

2. The petitioner herein is 1st defendant in the said suit. It appears that the petitioner had filed O.S.No.2801 of 2007 before the I Additional Junior Civil Judge, Ranga Reddy District against the respondent Nos.1, 2 and others for cancellation on certain documents and to declare that he is the owner and possessor of the suit schedule property. The said suit was decreed *ex parte* on 30-07-2011.

3. The respondent Nos.1 and 2 filed O.S.No.311 of 2012 before the I Additional District Judge, Ranga Reddy District at L.B.Nagar to set aside the said judgment and decree and they have also sought perpetual injunction against the petitioner and respondent Nos.3 to 6 restraining them from interfering with their alleged possession of plaint schedule property. In the plaint, they alleged that the petitioner had not given the correct address of respondent Nos.1 and 2 because of which the summons were returned with endorsement

‘addressee not found’ and taking advantage of the same, paper publication was done on 26-09-2009 in Sakshi Telugu Daily Newspaper; that the respondent Nos.1 and 2 were then set *ex parte*, and the suit was decreed. It was specifically urged that the respondent Nos.1 and 2 were staying in Pakistan from 2006-09 as the 1st respondent was posted to the Indian High Commission, Islamabad by the Government of India. They alleged that the very suit O.S.No.2801 of 2007 filed by the petitioner was not maintainable and even appropriate Court Fee has not been paid. Other contentions on the merits were also raised.

4. The petitioner then filed I.A.No.1609 of 2012 under Order 7 Rule 11 CPC to reject the plaint alleging that the respondent Nos.1 and 2 cannot maintain the suit for cancellation of a decree and that they can only go before the Court which passed the decree therein, to set it aside. It was further contended that respondent Nos.1 and 2 had in fact forged the signatures of the petitioner on G.P.A.

dt.13-10-1988 which was questioned in O.S.No.2801 of 2007 by the petitioner; and since the respondent Nos.1 and 2 had played fraud on the petitioner by getting the suit schedule property registered through a fraudulent transaction, they have not come to the Court with clean hands. It was also contended that the respondent Nos.1

and 2 had not mentioned about the reason for seeking cancellation of the decree and judgment in O.S.No.2801 of 2007, and therefore the plaint should be rejected.

5. Counter affidavit was filed by the respondent

Nos.1 and 2 opposing this application. The respondent Nos.1 and 2 contended that a defendant in a suit can not only seek for setting aside of an *ex parte* decree, but he can also file an appeal or an application for review, and he is also permitted to file a suit stating that service of notice was fraudulently suppressed. They relied upon the judgment of the Supreme Court in **Rabindra Singh Vs. Financial Commissioner; Cooperation Pubjab and others**^[1] in this regard. They pointed out that there is no necessity to go only before the Court which passed the decree in O.S.No.2801 of 2007 and that since they have not only sought cancellation of decree, but have also sought relief of perpetual injunction, they are entitled to approach the District Judge on the basis of the valuation of the reliefs. It was pleaded that cause of action occurred to the respondent Nos.1 and 2 to file the suit and they exercised the option available to them under law for challenging the judgment and decree dt.30-07-2011 in O.S.No.2801 of 2007 by way of a separate suit. It was further contended that it was petitioner who misled the Court and caused an *ex parte* decree to be passed and

the fraud played by the petitioner was clearly exposed in para-10 of the plaint. They also contended that the question of forgery raised by the petitioner can be gone into in trial and it was the petitioner who had not come to the Court with clean hands.

6. By order dt.04-04-2013, the Court below dismissed the said application.

7. It relied upon the decision of the Supreme Court in **Rabindra Singh** (supra) wherein the Supreme Court had observed that a defendant in a suit can challenge the *ex parte* decree not only by filing an application to set it aside, but he can also file an appeal or seek a review of the said judgment and decree and can even file a suit stating that service of notice was fraudulently done. It also held that the valuation of the suit was more than Rs.10.00 lakhs and therefore, the Junior Civil Judge, Ranga Reddy District, who decided O.S.No.2801 of 2007, would not have pecuniary jurisdiction to entertain the suit and that the grounds raised by the petitioner do not fall within Order 7 Rule 11 CPC.

8. Challenging the same, this Revision Petition is filed.

9. Sri Penjuri Venu Gopal, learned counsel, appearing for Sri T.Vinod Kumar, learned counsel for the

petitioner, contended that the order passed by the Court below is erroneous and that the Court below should have rejected the plaint taking into account the contentions raised by the petitioner. He reiterated the stand taken by the petitioner in the Court below.

10. Learned counsel for the respondents Sri M.V.Durga Prasad, however, supported the order passed by the Court below and sought for dismissal of the Revision Petition.

11. Order 7 Rule 11 CPC, insofar as it is relevant, states:

“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:

¹*[(e) where it is not filed in duplicate;]*

²*[(f) where the plaintiff fails to comply sub-rule (2) of rule 9;]*

³*[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.]”

12. In the present case, the respondent Nos.1 and 2 had filed the suit to set aside the judgment and decree passed in O.S.No.2801 of 2007 and also for cancellation of decree dt.30-07-2011 apart from seeking a perpetual injunction against the petitioner. It is their specific contention that their address for service of notice was not shown correctly by the petitioner, who was plaintiff in O.S.No.2801 of 2007, that paper publication was got made on the basis of which, the respondent Nos.1 and 2 were set *ex parte* and an *ex parte* decree was obtained.

13. According to the respondent Nos.1 and 2, 1st respondent during the period 2006-09 was working in the Indian High Commission in Islamabad and was posted there by the Government of India and therefore, he had no knowledge about the suit proceedings.

14. Both the petitioner as well as respondent Nos.1 and 2 have alleged that the other party is guilty of fraud and suffered misconduct.

15. These are disputed questions of fact which

need to be gone into in the suit.

16. The allegations made by the petitioner in I.A.No.1609 of 2012 are allegations on the merits of the claim of respondent Nos.1 and 2 and do not fall within any of the categories mentioned in clauses (a) to (f) of the Order 7 Rule 11 CPC.

17. As regards the contention of the petitioner that a suit to set aside the decree is not maintainable, the said contention is without any merit in view of the judgment of the Supreme Court in **Rabindra Singh** (supra) where the Supreme Court has specifically declared that a suit can also be filed by a defendant who suffered an *ex parte* decree stating that service of notice was fraudulently suppressed. The Supreme Court further held that not availing of the remedy under Order 9 Rule 13 CPC is not a bar to file a suit for cancellation of a decree.

18. In this view of the matter, I am of the considered view that the Court below had rightly dismissed the I.A.No.1609 of 2012.

19. So the Civil Revision Petition is dismissed. Liberty is given to the petitioner to raise all available defences in O.S.No.311 of 2012 and the Court below will then decide the same in accordance with law. No costs.

20. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 09-09-2015

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[\[1\]](#) (2008) 7 S.C.C. 663