

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Civil Revision Petition No.3859 of 2015

Dated 18.09.2015

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Between:

Batchu Venkata Jaya Ratnam

... Petitioner

and

-

Tulisetty Hema Venkata Ganesh and 5 others

...Respondents

Counsel for the petitioner: Mr.Gade Venkateswara Rao

Counsel for the respondents: ---

The Court made the following:

Order:

This Civil Revision Petition arises out of Order, dated 03.08.2015, in CFR.No.1673 of 2015, in OS.No._____ of 2015, on the file of the Court of the learned XI Additional District and Sessions Judge, Guntur, whereby the plaint presented by the petitioner was rejected under Order VII Rule 11 (a) and (d) of the Code of Civil Procedure, 1908 (for short 'the CPC').

A perusal of the order of the lower Court shows that at the pre-numbering stage of the suit, it has discussed the legal proposition relating to the validity or otherwise of a document executed, to which the petitioner, who was a minor, was a party. The lower Court has also considered the aspect whether the suit filed for partition was within the period of limitation. Eventually, the lower Court has rejected the plaint, purportedly, under Order VII Rules 11 (a) and (d) of the CPC.

Under sub-Rule (a) of Rule 11 of Order VII of the CPC, the plaint shall be rejected, if it does not disclose cause of action. A perusal of the plaint shows that in Paragraph 4, the cause of action is mentioned in detail. Therefore, the lower Court has committed a serious error in rejecting the plaint on the ground that it has not disclosed the cause of action.

As regards sub-Rule (d) of Rule 11 of Order VII of the CPC, the plaint is liable to be rejected, if the same is barred by any law. The lower Court has rejected the plaint by holding that the suit is barred by limitation. The limitation being a mixed question of fact and law, it is not desirable to reject the plaint at pre-numbering stage and it is appropriate to consider this aspect after the suit is numbered and both sides are heard. Therefore, the lower Court ought not to have taken up upon itself the task of deciding whether the suit is barred by limitation or not even before the suit is numbered.

For the above-mentioned reasons, the order of the lower Court is set aside. The lower Court is directed to register the suit. However, this order does not preclude the defendants in the suit from raising all the legally sustainable objections

against the maintainability of the suit on any ground.

The Civil Revision Petition is, accordingly, allowed.

As a sequel, CRPMP.No.5162 of 2015 is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

Dt: 18th September, 2015

LUR