

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.3538 of 2014

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ORDER:

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The unsuccessful defendant/petitioner filed this Civil Revision Petition under Article 227 of the Constitution of India assailing the orders dated 15.09.2014 of the learned Principal Junior Civil Judge, Mancherial passed in I.A. No.678 of 2014 in O.S.No.151 of 2012, filed under Order VII Rule 11(a) and (d) of the Code of Civil Procedure requesting to reject the plaint.

2. I have heard the submissions of the learned counsel for the revision petitioner/defendant and the learned counsel for the respondent/plaintiff. I have carefully perused the material record.

3. The parties in the Civil Revision Petition shall hereinafter be referred to as the defendant and plaintiff for convenience and clarity.

4. The introductory facts and the facts leading to the filing of the present revision by the defendant, in brief, are as follows: 'The plaintiff brought the suit against the defendant for eviction from the plaint schedule property *inter alia* alleging that the defendant was in possession of the schedule property even prior to the purchase of the schedule property by the plaintiff and that after the plaintiff had purchased the schedule property from his vendor he had made a request to the defendant to vacate the schedule property and handover the possession of the same to the plaintiff and that on that the defendant had requested him to allow the defendant to continue as a tenant in the schedule property and had also further promised to pay a rent of Rs.3,000/- per month and that thereafter, the defendant having continued as a tenant in the schedule property had committed defaults in payments of rents and that the defendant is liable for eviction from the schedule property not only for the reason that the defendant had committed defaults in payments of monthly rents but also for the

reason that the plaintiff, who is himself in occupation of a rented premises, requires the schedule property for his personal occupation. The defendant had filed written statement resisting the suit *inter alia* contending that he was inducted into possession of the plaint schedule property by the vendor of the plaintiff under an agreement and that under the said agreement he had paid Rs.1,20,000/- to the vendor of the plaintiff and that he is entitled to continue in possession of the property and that he has also a right to first purchase the property and that after the sale of the property by the vendor of the plaintiff there was no attornment of the tenancy and that, therefore, there was no jural-relationship of landlord and tenant between the plaintiff and the defendant and that there is no cause of action for the suit and that the Civil Court has no inherent jurisdiction to grant the relief of eviction as the plaint schedule property is covered by the provisions of the A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 (for short, 'the Rent Control Act'). Be that as it may, while the trial of the suit is in progress and after PW1 was cross-examined in part, the defendant had filed the interlocutory application seeking rejection of the plaint on the above stated grounds viz., the Civil Court has no jurisdiction to entertain the suit and grant a decree for eviction and that there is no cause of action for the plaintiff to file the suit against the defendant. The said application was resisted by the plaintiff by filing a counter. And, on merits, the trial Court had dismissed the said interlocutory application. Therefore, the defendant is before this Court.'

5. At the time of hearing the learned counsel for the defendant contended that the defendant was inducted into possession of the plaint schedule property by the vendor of the plaintiff under an agreement of lease and that under the said agreement the defendant had paid Rs.1,20,000/- to the vendor of the plaintiff and that he is entitled to continue in possession of the property and that he has also a right to first purchase the property and that after the sale of the property by the vendor of the plaintiff there was no attornment of the tenancy and that, therefore, there was no jural-relationship of landlord and tenant between the plaintiff and the defendant and that there is no cause of action for the suit and that the Civil Court has no inherent jurisdiction to grant the relief of eviction as the plaint schedule property is covered by the provisions of the Rent Control

Act. On the other hand, the learned counsel for the plaintiff would contend that there was attornment of the tenancy and that on the defendant undertaking to pay the monthly rents and his request to allow him to continue as a tenant, the plaintiff permitted the defendant to continue in possession of the schedule property and that the defendant had committed defaults in payments of rents and that rent is Rs.3,000/- per month is not in dispute and that the plaintiff is in possession of a rented premises and that the plaintiff requires the schedule property for his personal occupation and that the Civil Court has got jurisdiction not only as per the averments in the plaint, which are relevant for consideration, but also as per the true facts and that the trial Court's order is valid in all respects and that the petition and the revision are filed to drag on the matter and that there is no merit in the revision and that the revision is liable to be dismissed confirming the order of the trial Court.

6. Now the point for consideration is:

Whether the defendant had made out valid and sufficient grounds for rejection of the plaint? And, If so whether the impugned order is liable to be set aside in the facts and circumstances of the case?

7. POINT:

7. (a) The facts and contentions are stated supra, in detail. Coming to the first contention that there is no cause of action for the suit and that there is no jural relationship of landlord and tenant between the parties, the specific case of the defendant is that there was no attornment of the tenancy of the defendant to the plaintiff by the vendor of the plaintiff at the time of purchase of property by the plaintiff or at any time thereafter and that therefore, the plaintiff has no *locus standi* to sue and that therefore the plaint is to be rejected. What is to be noted is that the cause of action is a bundle of facts and the plaint has to be read in

entirety to determine as to whether or not there is cause of action for the plaintiff to file the suit. In a decision in the case of **Bhau Ram vs. Janak Singh and others**, it is held by the Supreme Court as under:

“The law has been settled by this Court in various decisions that while considering an application under Order VII Rule 11 Code of Civil Procedure, the Court has to examine the averments in the plaint and the pleas taken by the Defendants in its written statements would be irrelevant. [vide *C. Natrajan v. Ashim Bai and Anr.* (2007) 14 SCC 183, *Ram Prakash Gupta v. Rajiv Kumar Gupta and Ors.* (2007) 10 SCC 59, *Hardesh Ores (P) Ltd. v. Hede and Co.* (2007) 5 SCC 614, *Mayar (H.K.) Ltd. and Ors. v. Owners & Parties, Vessel M.V. Fortune Express and Ors.* (2006) 3 SCC 100, *Sopan Sukhdeo Sable and Ors. v. Assistant Charity Commissioner and Ors.* (2004) 3 SCC 137, *Saleem Bhai and Ors. v. State of Maharashtra and Ors.* (2003) 1 SCC 557]. The above view has been once again reiterated in the recent decision of this Court in *The Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman v. M/s Ponnamman Educational Trust represented by its Chairperson/Managing Trustee*, JT 2012 (6) SC 149.”

Therefore, it is clear from the legal position applicable, that this Court has to examine only the averments in the plaint but not the pleas taken by the defendant in his defence. A plain reading of the plaint would show that the plaintiff has clearly stated in the plaint that after the plaintiff had purchased the schedule property from his vendor, he had made a request to the defendant to vacate and handover vacant possession of the schedule property to the plaintiff and that on that the defendant had requested him to allow the defendant to continue as a tenant in the schedule property and that the defendant had also further promised to pay a rent of Rs.3,000/- per month and that thereafter, the defendant having continued as a tenant in the schedule property had committed default in payments of rents and that the defendant is liable for eviction from the schedule property not only for the reason that the defendant had committed defaults in payments of monthly rents but also for the reason that the plaintiff, who is himself in occupation of a rented premises, requires the schedule property for his personal occupation. Thus, a plain reading of the plaint would show that there is a clear pleading of jural relationship between the parties. It is also clear from the plaint averments that all the necessary material facts constituting the cause of action to institute the suit are also averred in the plaint. Therefore, the first contention of the defendant that the plaint is liable to

be rejected for want of cause of action and jural relationship between the parties is devoid of merit and is, hence, rejected.

7. (b) The learned counsel for the plaintiff alternatively contended that even if it is assumed for a moment, without admitting that there was no attornment of tenancy, still, the possession of the defendant of the schedule property shall be treated as that of a tenant as the plaintiff had purchased the property under registered sale deed and as there is no requirement of attornment of tenancy under settled law. He had placed reliance on the ratio laid down in the decisions in (i) **Mudunuri Suryanarayana raju V/s. Korukonda Appa Rao and Shankaramma and others v. Mohammad Abudl Hameed and Another.** In the decision in Mudunuri Suryanarayana Raju (supra), the ratio is as follows: *“Neither in the provisions of the Transfer of Property Act nor under the provisions of A.P.Rent Control Act there is any provision for attornment of the tenancy by the tenant in favour of the transferee and such transferee would automatically become the landlord of the tenant on the same existing terms and conditions”*. In view of the settled legal position, there is no merit in the contention that there is no jural relationship of landlord and tenant between the plaintiff and the defendant.

7. (c) Coming to the next contention that the Civil Court lacks inherent jurisdiction, what is to be noted is that the issue of jurisdiction is a mixed question of fact and law. It is clearly averred in the plaint that the monthly rent is Rs.3,000/-. However, the learned counsel for the defendant contends that since Mancheri, where the schedule property is situated is a Municipal Corporation and that as the rent is less than Rs.3,500/- per month, the civil Court has no jurisdiction and that the court of the learned Rent Controller has got jurisdiction to entertain an eviction petition. However, he is unable to state as to whether that Mancheri, where the schedule property is situated, is a Municipal Corporation or a Municipality. On the other hand, the learned counsel for the plaintiff had asserted that Mancheri is a Municipality and not a Corporation. The relevant provision of Section 32 of the Act says that the provisions of the Act shall not apply to any building the rent of which as on the

date of the commencement of the Act exceeds rupees three thousand and five hundred per month in the areas covered by the Municipal Corporations in the State and rupees two thousand per month in other areas. Therefore, this issue of jurisdiction being a mixed question of fact and law has to be decided after full-fledged trial. Moreover, the plaint cannot be rejected on the allegation made in the written statement that the suit is barred by law. The plaint can be rejected only in cases where the suit appears from the statement in the plaint to be barred by any law. But this is not so in the case on hand. The view expressed supra is in accord with the well settled legal position. In the case of **United Insurance Co. v. C. R. Ramanatham**, it is held as follows:

Under Order VII Rule 11 (d) a plaint must be rejected only if the averments therein explicitly disclose that the suit was barred by the provisions of any law, but not otherwise. The Court had no power to throw out the suit by rejecting the plaint at the threshold stage by examining and interpreting the provisions of law on which the suit is found. Neither the express language of clause (d) of Rule 11 nor its intendment clothes the Court with such a power. The words “where the suit appears to be barred by any law” are qualified by “the statement in the plaint”. What is explicitly mentioned in the plaint, therefore, must alone be the basis for the exercise of power under Order VII Rule 11 (d), but not the conclusions that may be interpretatively drawn on an examination of the statutory provisions alluded to in the plaint. Where there was no such explicit statement in the plaint the question whether there was any legal barricade to the suit must be tried as an issue at the appropriate stage and that by this procedure alone the interests of both the parties to the suit could be safeguarded.”

Therefore, there is no merit in the second set of contentions also.

7. (d) Before concluding the discussion on the points, it is necessary to mention that the learned counsel for the defendant had placed reliance on a decision in **Kamala and others v. K.T.Eshwara Sa and Others** in support of the contention that the ground of absence of jurisdiction of the court can be

invoked at different stages of the proceeding and under different provisions of the Code for the rejection of the plaint. There is no dispute with this particular proposition. In this decision also, the Hon'ble Supreme Court had held that for the purpose of invoking Order VII Rule 11 (d) of the Code, no amount of evidence can be looked into and that the issues on the merit of the matter, which may arise between the parties would not be within the realm of the court at that stage. It is also held that at the stage of considering an application under Order VII Rule 11(d) of the Code the court would not consider any evidence or enter into a disputed question of fact and law; and that either it must be shown or a conclusion must be drawn from the averments made in the plaint that the suit is barred under any law. Viewed thus, this Court finds that there is no merit in the Civil Revision Petition and the same is devoid of merits and is liable to be dismissed. The points are accordingly answered against the defendant/revision petitioner.

8. In the result, the Civil Revision Petition is dismissed with costs.

Miscellaneous petitions pending, if any, in this Civil Revision Petition shall stand closed.

M.SEETHARAMA MURTI, J

Date: 06.03.2015

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