

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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CIVIL REVISION PETITION No.281 of 2015

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ORDER:

This revision, under Article 227 of the Constitution of India, is preferred against the order passed by the Learned Additional Senior Civil Judge, Chittoor in I.A. No.1121 of 2012 in O.S. No.292 of 2012 dated 21.10.2014.

The 1st respondent herein, a minor, filed O.S. No.292 of 2012 for partition of the suit schedule property. In the plaint, he averred that his father met with a road accident on 26.11.2003, and suffered severe injuries to his brain; as a consequence of which both his hands and legs became paralysed; he lost his memory and all normal senses, and became mentally retarded, and developed a child like behaviour; as the second defendant assumed management of the joint family, his mother was confined to the kitchen, and in looking after her mentally retarded husband; she had no other go except to depend on the first defendant for her livelihood, the medical expenditure of the 3rd defendant, and for maintenance of the family; whenever the 1st defendant asked the plaintiff's mother to put her signatures, she used to, therefore, put her signature out of blind faith; in the said manner, the 1st defendant had brought the partition deed dated 03.10.2008, and had asked his mother to sign the same; and out of blind faith and belief, as she was dependent on him, his mother had signed as an attester therein.

I.A. No.1121 of 2012 was filed, by defendants 2 and 5 in O.S. No.292 of 2012, to reject the plaint. By the order under revision the Court below, relying on several judgments of this Court, held that the question whether the 3rd defendant was mentally retarded, whether he was fit to act as a natural guardian of his minor son, whether the plaintiff's mother had the locus standi to represent her minor son, and whether the plaint was barred by limitation, were all issues that could not be decided in a petition under Order VII Rule 11 CPC; they were required to be decided only

after framing triable issues; cause of action is a bundle of facts; by simply going through the averments in the plaint, such issues could not be decided; mere absence of detailed particulars would not necessitate rejection of the plaint, the allegations that the 3rd defendant was hale and healthy, and had executed a mortgaged deed in favour of the bank for the loan obtained by the plaintiff's mother, were all pleas which were required to be proved by cogent evidence; and the plaint did not necessitate rejection at this stage.

Sri P. Govind Reddy, Learned Counsel for the petitioner, would place reliance on Sections 50 and 51 of the Mental Health Act, 1987, in support of his submission that it is only the District Court which can declare a person to be mentally ill; and, in the absence of the third defendant being declared mentally retarded, the plaint, filed on the premise that he was mentally retarded, was liable to be rejected; as held by the Supreme Court, in **T. Arivandandam v. T.V. Satyapal**, a vexatious suit should not be entertained merely because of clever drafting of the plaint; and the Court below had erred in rejecting the plaint.

On the other hand, Sri Nimmagadda Satyanarayana, Learned Counsel for the respondent, would place reliance on the judgment of the Supreme Court, in **Bhanu Ram v. Janak Singh**, in support of his submission that the truth or otherwise of the averments in the plaint can only be examined during the course of trial; jurisdiction under Order 7 Rule 11 CPC must be exercised taking the plaint and its contents to be true; and the Court below had rightly rejected the application filed for rejection of the plaint.

Section 50 of the Mental Health Act, 1987 enables an application to be made by any of the relatives of a mentally ill person and the Court, after having him examined and being satisfied after due enquiry that he is mentally ill, is empowered under Section 52 to appoint a guardian to manage the properties of the mentally ill person. No such request is made in the present suit. The contention raised therein is merely that the 3rd defendant, being mentally retarded, was not capable of executing a registered partition deed. Sections 50 and 51 of the Mental Health Act have, therefore, no application.

It is no doubt true that, as held by the Supreme Court in **T. Arivandandam¹**, on a meaningful reading of the plaint if it is manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, the power under Order VII Rule 11 CPC must be exercised. The fact, however, remains that, as declared by a catena of judgments including the judgment of the Supreme Court in **Bhau Ram²**, while considering an application under Order 7 Rule 11 CPC, the Court has to examine the averments in the plaint; and the pleas taken by the defendant, in the written statement, would be irrelevant to such an examination. On a reading of the plaint, it cannot be said that the plaint is vexatious, and that no clear right to sue is disclosed. It is for the plaintiff to establish, before the Court below, that the 3rd defendant is mentally retarded, and that his mother had attested the registered partition deed not on her free will. These are matters which can be examined only during the trial of the suit. I see no reason, therefore, to interfere with the order of the Court below refusing to accede to the petitioner's request for rejection of the plaint.

The Civil Revision Petition fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

(RAMESH RANGANATHAN, J)

Date: 27.03.2015

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