

APPLICATION NO.725 OF 2015
IN C.S.NO.764 OF 2010

PUSHPA SATHYANARAYANA, J.

The above application is filed by the applicant / sixth defendant in the suit for rejection of the plaint.

2. The suit is filed by the plaintiff for the relief of specific performance for contract of sale of the suit schedule property, to which the applicant is not a party.

3. From the plaint averments, there is no concluded contract at all, much less, a privity between the applicant and the plaintiff. The defendants 1 and 2 had entered into an agreement dated 19.06.2009, to sell the suit property, to the plaintiff. It is also stated that the defendants 3 to 5 had executed release deeds in favour of the defendants 1 and 2 acknowledging the validity of the will, with respect to which, T.O.S.No.33 of 2005 is pending. As the applicant / sixth defendant is not a party to any of these proceedings, he has prayed for rejection of the plaint, with respect to the applicant.

4. The above application is resisted by the plaintiff and other defendants. As per the will dated 15.07.1994, the plaint property is bequeathed in favour of the defendants 1 and 2. With respect to the probate proceedings, T.O.S.No.33 of 2005 is pending. It is averred by the respondents that initially, the applicant had agreed to give consent for probate of the will and also the consequent sale of the property to the plaintiff. It is the further case that the applicant and the other siblings had authorised the defendants 1 and 2, who were the beneficiaries under the will, to deal with the property. It was also further alleged that the sixth defendant had taken his share of the money. However, he refused to cooperate with the defendants 1 and 2, in executing the sale deed. Therefore, the applicant / sixth defendant is a necessary party to the suit and the plaint cannot be rejected against him. As the applicant has pleaded that there is no cause of action against him, rejection of the plaint is sought for on the ground that there is no cause of action made out against the applicant.

5. While considering the application under Order VII Rule 11 of the Code of Civil Procedure, only the plaint averments have to be taken into consideration. In the plaint, paragraph no.3 deals with the agreement, entered into by the plaintiff and his wife, with the defendants 1 and 2, for the purchase of the suit property, under the agreement dated 27.06.2007. As per the said agreement, the defendants 1 and 2 acquired property under the will dated

15.07.1994, executed by their father and they have agreed to settle themselves among other brothers and sisters, by meeting their demands and claims, in respect of the suit property, to get the probate in respect of the will in favour of the defendants 1 and 2. Para 4 of the plaint mentions about the amounts received by the defendants 1 and 2. Para 5 deals with a fresh agreement entered into by the plaintiff and the defendants 1 and 2, which is dated 19.06.2009. It is stated that the agreement was entered into by the defendants 1 and 2, based on the understanding arrived at between the defendants. It only further states that payments and endorsements were made for and on behalf of others. Para 6 of the plaint deals with the release deeds executed by the defendants 3 to 5 acknowledging the validity of the will and the rights of the defendants 1 and 2. It is also further stated in the said paragraph that defendants 3 to 5 have also filed their consent affidavit in the pending probate proceedings for issuance of the probate. Para 7 deals with the other allegations against the defendants 1 and 2. In para 8, for the first time, it is stated that even though the defendants 3 to 6 are not signatories to the present agreement, the conduct and receipts of the amount in lieu of their claim under the suit agreement bind them also to make them answerable. Hence, they are necessary parties.

6. According to the applicant, though the plaintiff has averred that the sixth defendant also had taken money from the plaintiff, so as to bind themselves to the agreement, there are no such details or any document has been filed to that effect. In the cause of action paragraph also, nothing is made out against the applicant / sixth defendant.

7. From the above pleadings, it is clear that the plaintiff has laid the suit, on the agreement dated 19.06.2009. The agreement of sale itself is subject to probate of the will. Therefore, unless probate is granted, the sale under the agreement, cannot be executed. Hence, it was contended by the learned counsel for the applicant that the agreement of sale is executed, without the knowledge and consent of the applicant, in respect of his share also. Therefore, so far as the probate not issued with respect to the will, the agreement entered into between the defendants 1 and 2 is said to be not binding on the sixth defendant.

8. A reading of Order VII Rule 11 of the Code of Civil Procedure makes it clear that where the plaint does not disclose a cause of action, the Court has got powers to reject the same, and such powers can be exercised at any stage of the suit, even after issuance of summons to the defendants and before the conclusion of the trial. For this purpose only, the averments made in

the plaint alone have to be looked into. For the purpose of deciding an application under Clause (a) of Order VII Rule 11, the averments made in the plaint are germane.

9. The pleas taken by the defendants in the written statement would be wholly irrelevant at that stage. Therefore, though in this case the applicant had filed his written statement, the Court is duty bound to only consider the averments made in the plaint, as the averments made in the written statement are immaterial.

10. The plaint has been so drafted that there is a cause of action made out against the applicant. The plaint may be absolutely bereft of any details with respect to the applicant / sixth defendant and what is the cause of action against him, what was the earlier transactions between the plaintiff and the sixth defendant etc. and not produced any scrap of paper to prove that the applicant received amounts from the plaintiff, as consideration, towards his share of the property.

11. It is a well known principle that cause of action is a bundle of facts, which taken with the law applicable to them gives the plaintiff the right to get the relief against the defendant. A cause of action must include some act

done by the defendant, since in the absence of such an act, no cause of action can possibly accrue. It is also mandatory that the plaintiff has to aver all material facts and prove the same in order to succeed in the suit.

12. Admittedly, as seen in the plaint, the plaintiff has not averred anything against the applicant / sixth defendant, much less to prove the same at a later stage. In short, the plaintiff has not made out a cause of action against the applicant / sixth defendant.

13. The learned counsel for the applicant also submitted that the agreement relied on by the plaintiff is subject to proof of the will in the probate proceedings. When the agreement itself is subject to some ratification, then, the same is not a concluded contract and the very suit filed as such, has to fail.

14. In this background of the averments contained in the plaint, the application under Order VII Rule 11 need to be considered. It is contended by the applicants that there is no cause of action disclosed against the applicant.

15. The learned counsel for the plaintiff supported the averments made in the plaint. A plaint may not be rejected under Order VII Rule 11 merely

because the cause of action does not arise in respect some of the defendants or defendant. As long as there is a cause of action for filing of the suit and the same is disclosed in the plaint Order VII Rule 11 will not apply. The Court need not dissect the pleadings into several parts and consider whether there is cause of action against each of the defendant. It is a settled principle that there cannot be a partial rejection of the plaint. It is only when a plaint read as a whole does not disclose any cause of action Order VII Rule 11(a) will come into play. As long as the plaint as a whole discloses a cause of action although against a few defendants only, the same cannot be rejected.

16. Admittedly, there is a cause of action against defendants 1 and 2. May be eventually the plaintiff cannot establish their case against the applicant. But at this stage by merely examining the plaint averments, it cannot be said that plaintiff do not have any cause of action even in respect of the applicant.

17. In fine, the application of the sixth defendant / applicant stands dismissed. No costs.

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Index : Yes/No
Internet : Yes/No
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