

* HON'BLE SRI JUSTICE CHALLA KODANDA RAM

+ CIVIL REVISION PETITION No. 5676 of 2015

% **23rd February, 2016**

Anireddy Amrutha Devi @ Amruthamma,
W/o late A. Raghava Reddy, Aged about
72 years, Occ: Hosuehold, R/o
Mothinagar, barkatpura, Hyderabad

... Petitioner...

AND

\$ Anireddy VAsudha @ Vasudha Reddy,
W/o Late Veera Reddy, Aged about 55
years, Occ: Household and three others.

... Respondents...

! Counsel for the Petitioner : Sri K. Mahipathi Rao

^ Counsel for the respondents 1&2 : Sri B. Nalin Kumar

< Gist:

> Head Note:

? Cases referred:

[1] 2013 (6) ALD 355 (DB)

² AIR 2008 Supreme Court 2033

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

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ORDER:

The order dated 19.11.2015 in I.A.No.880 of 2015 in O.S.No.37 of 2015 passed by the learned I Additional District Judge, Nalgonda (FAC Judge, VIII Additional District Judge, Miryalaguda) rejecting the prayer of the petitioner-1st defendant, filed under Order VII Rule 10 and 10A of CPC read with Section 151 C.P.C. seeking returning of the plaint, is challenged before this Court.

The respondents 1 and 2 are the plaintiffs filed a suit against the petitioner and respondents 3 and 4 herein, who are defendants 1 to 3 respectively in O.S.No.37 of 2015 on the file of VIII Additional District Judge at Miryalaguda.

The averments made in the affidavit filed in support of the I.A.No.880 of 2015 in brief are that the suit is filed by the 1st and 2nd respondents-plaintiffs seeking grant of permanent injunction restraining the petitioner-1st defendant from alienating or conveying or delivering possession or otherwise creating rights in favour of the 3rd parties with respect to the suit schedule property without first offering the same to the plaintiffs. Petitioner filed her written statement. In the written statement a specific plea was taken that the suit relief of the nature which has been prayed for is misconceived and not maintainable. Along with suit petitioners filed I.A.No.880 of 2015 praying for returning of the plaint to the plaintiffs under Order VII Rule 10 and 10A read with Section 151 of C.P.C. The averments in the affidavit filed along with I.A. are that the suit is not maintainable in view of the relief claimed by the plaintiffs seeking perpetual injunction restraining the petitioner-1st defendant from alienating his property, which is clearly demarcated with specific boundaries in the Award passed by the Lok Adalath. The maintainability or otherwise of the suit of the nature is considered and settled by a Division Bench of this Court in **Shankar Hills Plot Purchasers Welfare Association, Hyderabad and another Vs Ch. Anantha Reddy and others** [\[1\]](#)

wherein this Court directed returning of the plaint.

The learned Additional District Judge, after considering the pleadings and respective submissions did not accept the plea of the petitioner and dismissed the I.A.

Appearing on behalf of the petitioner-1st defendant Sri Vedula Venkata Ramana, learned Senior Counsel, by drawing attention to the main relief which has been claimed in the suit and by reference to the Division Bench judgment in **Shankar Hills Plot Purchasers Welfare Association case (1 supra)**, would submit that the relief of the nature which has been claimed is not capable of being granted by the Court below and as such the Court ought to have returned the plaint. Learned senior counsel fairly submits that though in strict sense under Order VII Rule 10 or 10A of C.P.C. does not provide for return of the plaint, Division Bench had considered moulding the relief. He would draw particular attention to the paras 12 and 13 of the said judgment wherein the Division Bench of this Court while refusing to grant relief of rejection of the plaint issued certain directions to return of the plaint to make necessary amendments in the plaint. He would submit that particularly when the suit simpliciter is filed seeking mandatory injunction without seeking declaration, similar orders may be passed in the present case as well.

Learned counsel Sri B. Nalin Kumar, appearing on behalf of the Caveators-plaintiffs supports the order of the Court below and further placed reliance on the judgment of the Supreme Court in **Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by L.Rs., and Others** ^[2] wherein it was held that in a suit for declaration there is no requirement of praying for declaration as there is already pre-existing right in favour of the plaintiff.

For settling the issue in controversy we may notice the relief claimed in the suit which is as under:

“Hon’ble Court may be pleased to pass a judgment and decree in favour of the plaintiffs and against the defendants:

(a) Granting a permanent injunction restraining the 1st defendant from alienating or conveying or delivering possession or otherwise creating rights in favour of third parties including the 2nd defendant pursuant to the public notice dated 07.10.2015 published in ‘Eenadu’ Telugu daily news paper any part of suit schedule property without first offering the same for purchase by the plaintiffs and the defendant No.3 at market rate, and contrary to the terms, and in excess of the property allotted to the 1st defendant in the Award dated 18.06.2009 in Lok Adalat Case No.497/2009 in O.S.No.20/2009 on the file of the Hon’ble Principal District Judge, Nalgonda and without demarcation of the share of the plaintiffs, defendant No.3 and defendant No.1 herein as also common amenities in the suit schedule property.”

The claim of the plaintiffs’ stems from the Lok Adalat Award dated 18.06.2009. In other words, the right of the plaintiff in the suit schedule property is not in dispute. The parties to the suit in O.S.No.20 of 2009 on the file of learned Principal District Judge, Nalgonda, are admittedly interrelated and the owners of the suit schedule property. Originally the suit schedule property belonging to one Sri Late A. Raghava Reddy who inherited the same from his father. The 1st plaintiff in O.S.No.37 of 2015 is the wife and the 2nd and 3rd defendants are the sons of late Veera Reddy, who is the son of late A. Raghava Reddy. Late A. Raghava Reddy was father-in-law of 1st plaintiff and paternal grandfather of the plaintiff No.2 and defendant No.3 in O.S.No.37 of 2015. Defendant No.1 is the second wife of late A. Raghava Reddy. During the life time of late A. Raghava Reddy, he executed a Will dated 15.07.1998 and settled the properties in favour of the 1st defendant and her step son late A. Veera Reddy. As the disputes arose between the 1st defendant and her step son A. Veera Reddy and step daughters, O.S.No.20 of 2009 was filed on the file of Principal District Judge at Nalgonda for partition and separate possession of the properties. Thereafter, the parties arrived at a compromise through mediation and the compromise was formalized through Lok Adalath Award dated 18.06.2009. In terms of the Lok

Adalath settlement the rights of the respective parties and their shares were determined, but there was no physical demarcation made by metes and bounds. It is the contention of the plaintiffs that the defendants, without there being a clear demarcation of the suit schedule properties, are trying to alienate more extent of property than what was otherwise entitled to and the same cannot be done without there being clear demarcation. Hence the suit is maintainable injecting the defendants from proceedings with the proposed alienation. The claiming of such relief is maintainable. If at all 1st defendant intends to alienate the property they are the one who has to seek demarcation of the property by metes and bounds in terms of the Lok Adalat Award and thereafter such demarcated portion which falls to their share can be dealt in the manner as they may please. Inasmuch as, the plaintiff at this stage are not interested in alienating the property and they have a right to enjoy the same and in terms of the Award they are entitled to seek the relief as claimed in the suit.

Heard the learned counsel appearing on behalf of the parties. Perused the record. The judgment of the Division Bench referred to by the learned Senior Counsel has no application in the case on hand as in that case the plaintiffs therein never had any right over the property and as such the relief of the nature claimed was held to be not maintainable. The same is clear from a reading of para 11 of the said judgment;

“11. However, we find force in the contention of the respondents that there are several defects in the suit. If they are brought to the notice of the trial Court, it can be a case for return of the plaint, than for rejection thereof. For instance, whenever the relief of perpetual injunction is claimed in the suit, it must be with reference to a specific item of property. Except that the plaintiffs have furnished the numbers to certain plots, they did not indicate the particulars. The second aspect is that it was not even pleaded that the 1st plaintiff purchased the land; divided the same into plots, and allotted to its members. The Association came into existence, after the so-called purchases. Therefore, the ownership of the plots, if at all, is with the respective purchasers. The mere fact that the purchasers formed themselves into an association cannot be a ground to

claim the relief of perpetual injunction, for and on behalf of such persons. Add to that, the individual purchaser must feel the grievance, in relation to his plot. The grievance in this regard cannot be general or common.”

Apart from that the Order VII Rule 11 of C.P.C. provides for rejection of a plaint on certain grounds. In the present case, the application has not been made under Order VII Rule 11 of CPC. The same is made under Order VII Rule 10 and 10A of C.P.C. which provides only in one contingency the return of plaint i.e., only on the Court coming to the conclusion that the suit is not initiated in the proper Court or the Court does not have either pecuniary or territorial jurisdiction. The same is clear on a conjoint reading of Order VII Rule 10 and Rule 10A (iii) of C.P.C. The learned I Additional District Judge, Nalgonda (FAC Judge, VIII Additional District Judge, Miryalaguda) had taken all these aspects into consideration and rightly refused to return the plaint. In the facts of the present case, the impugned order does not warrant any interference of this Court and as such this Civil Revision Petition is liable to be dismissed.

Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall also stand closed.

CHALLA KODANDA RAM, J

Dated:23.02.2016

Note: L.R. Copy to be marked.

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[\[1\]](#) 2013 (6) ALD 355 (DB)

[\[2\]](#) AIR 2008 Supreme Court 2033