

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.4250 OF 2016

ORDER:

This petition is filed under Article 227 of the Constitution of India to set aside the order dated 30-6-2016 in I.A.No.2860 of 2014 in O.S.No.554 of 2014 on the file of XXV Additional Chief Judge, City Civil Court, Hyderabad and to allow the said I.A. and to reject the plaint.

Petitioner herein is 10th defendant and respondents 1 to 9 are plaintiffs and respondents 10 to 13 are defendants 2 to 5 before the trial court in the suit filed under order 7 Rule 11 of C.P.C. and sought rejection of plaint on three grounds which are as follows:

(a) The first ground is that the allegation made in the plaint would not give raise to cause of action and cause of action mentioned in the plaint is not true.

(b) The second ground is that the property was not properly valued and thereby, the plaint is liable to be rejected.

(c) The third ground is that there is some inconsistency between pedigree and plaint allegations.

Respondents filed counter denying the material allegations while contending that the court cannot reject the plaint except on the ground enshrined under Order VII Rule 11 of C.P.C. and ground Nos.2 and 3 are beyond the scope of the Order VII and Rule 11 C.P.C., and the truth or otherwise in the allegations made in the plaint cannot be considered at this stage to reject the plaint filed

under Order VII Rule 11 of C.P.C. and prayed for dismissal of the present petition.

The trial court, upon hearing arguments of both parties, dismissed the petition by order dated 30-6-2016.

Aggrieved by the order passed by the XXV Additional Chief Judge, City Civil Court, Hyderabad, the present revision is filed on various grounds mainly contending that the plaint is liable to be rejected when the facts alleged in the plaint are not true, since those allegations did not give rise to cause of action and that apart, no material is produced before this court to substantiate the contention, prima facie, whether the property is the ancestral property or not. It is also contended that the suit was not properly valued and there is any amount of discrepancy between family pedigree and allegations made in the plaint regarding relationship, but the trial court did not consider these three grounds to exercise its jurisdiction under Order 7 Rule 11 read with Section 151 of C.P.C. and erroneously dismissed the petition negating the relief claimed for rejection of plaint.

During hearing, learned counsel for the petitioner Sri Vedula Srinivas contended that the petitioner is required to produce sufficient material in support of the allegations regarding acquisition of the property so as to establish prima facie that the schedule property is only property purchased under document subject to proof and in such a situation, the court can reject the claim of the respondents. He also further contended that when the suit was not

properly valued in view of the Order 7 Rule 11 of C.P.C., the court is bound to reject the plaint.

Whereas the learned counsel for the respondents contended that the plaint disclosed cause of action but truth or otherwise in the plaint cannot be decided before completion of trial while deciding the petition filed under Order 7 Rule 11 read with Section 151 C.P.C. to reject the plaint and so much so, whether the properties are self acquired or not is a question of fact to be decided and the counsel for the respondents placed reliance on the judgment of apex court reported in *JOHN KENNEDY AND ANOTHER V. RANJANA AND OTHERS*⁽¹⁾ in support of his contention.

So far as second objection is concerned, his submission is that it is for the court to decide whether to grant time for proper valuation of plaint and for payment of court fee, but the petitioner-defendant is not entitled to question the same in view of the order 7 Rule 11 (c) of C.P.C.. that too, subject to granting time by the court itself.

The 3rd contention is not at all a ground to reject the plaint in view of the limited power conferred on the court and thereby, the order under challenge is free from any legal infirmity warranting interference and prayed to dismiss the petition.

Considering rival contentions and material available on record, the points for consideration are:

(1) Whether the plaint is liable to be rejected as plaintiffs-respondents herein failed to substantiate the allegations made in the

¹ (2014) 15 SCC 785

plaint by producing prima facie evidence and whether such facts would give rise to cause of action or not.

(2) Whether the relief claimed in the plaint is properly valued, if not, the plaint is liable to be rejected by exercising the power under Order 7 Rule 11 (c) of C.P.C.

POINT Nos.1 and 2:

The first and foremost contention raised by the petitioner-defendant No.10 is that the allegations made in the plaint regarding succeeding the property from the ancestors is not substantiated by any document by the respondents-plaintiffs to prove prima facie that it is the ancestral property to proceed further in this suit but filing of plaint without any supporting material is a ground to reject the plaint exercising power under Order 7 Rule 11 read with Section 151 C.P.C.

At this stage, it is relevant to advert to the allegations made in the plaint; the suit was filed for passing preliminary decree for partition and separate possession of the schedule property by metes and bounds. The specific allegation is that the plaintiff is residing separately on account of his business and the defendant No.1 used to look after the affairs of schedule property and used to give his due share of the respondents-plaintiffs by way of the proceeds from the property but he came to know that defendant No.1 became old and to avoid further complications of families with regard to the family properties made several oral attempts for partition by metes and

bounds but defendants 1 to 6 dragged on the matter on one pretext or other postponing partition of the same.

Thus, the petitioner is claiming that the property is the joint family property. In paragraph 5 of the plaint, the plaintiff specifically asserted that the property was acquired by late Vadla Ramanna. In para 9 of the plaint, the cause of action was mentioned. He also produced certain documents in support of his contention that this property was acquired by grand-father and produced No.2 adangals where his vendor's name was shown as pattadar in column No.9. However, plaintiffs are not required to produce at the stage of filing of plaint. He also filed sale deed executed by grandfather of the plaintiff and father of D.1, in favour of the petitioner herein where there is a recital about nature of acquisition by father of the plaintiffs. The truth or otherwise in the allegations made in the plaint cannot be looked into at this stage to decide the petition filed under Order 7 Rule 11 read with Section 151 C.P.C.

But in the present case, the plaint disclosed cause of action i.e, date when he made a demand for partition of the ancestral property purchased by late Ramana father of D.1 and grand-father of plaintiff and later, he was postponing the same on one pretext or the other. Now the question is what is the cause of action for partition suit.

It is settled law that the defence of the defendants cannot be looked into while considering the application filed under Order 7 Rule 11 read with Section 151 C.P.C.,and the court has to consider

entire allegations made in the plaint to find out that whether the plaint disclosed the cause of action for the suit or not.

Learned Counsel for the revision petitioner with regard to cause of action, drawn the attention of this Court to a judgments of the Apex Court rendered in *THE CHURCH OF CHRIST CHARITABLE TRUST AND EDUCATIONAL CHARITABLE SOCIETY, REPRESENTED BY ITS CHAIRMAN V. PONNIAMMAN EDUCATIONAL TRUST REPRESENTED BY ITS CHAIRPERSON/ MANAGING TRUSTEE*², *SALEEM BHAI AND ORS. V. STATE OF MAHARASHTRA AND ORS*³, *RAPTAKOS BRETT AND CO.LTD. V. GANESH PROPERTY*⁴, *MAYAR (H.K.) LTD. AND ORS. V. OWNERS AND PARTIES, VESSEL M.V.FORTUNE EXPRESS AND ORS*⁵ AND *T.ARIVANDANDAM V. T.V.SATYAPAL AND ANR*⁶ and on the strength of the above judgments, it is contended that the Court has to take into consideration total allegations made in the plaint and decide whether the plaint discloses cause of action for filing the suit.

In the facts of the above judgment, in a suit for specific performance, the defendant filed application under Order VII Rule 11 of C.P.C. on the ground that the plaint does not disclose cause of action. The single Judge of the High Court rejected the plaint insofar as the 1st defendant is concerned and directed that the suit can be proceeded against the 2nd defendant, while rejecting the application

² 2012 (3) RCR (Civil) 811

³ (2003) 1 SCC 557

⁴ (1998) 7 SCC 184

⁵ (2006) 3 SCC 100

⁶ (1977) 4 SCC 467

for interim injunction and amendment of the plaint. Thereupon the order was challenged by the plaintiff before the Division Bench, on that, the Division Bench by its order, while dismissing the appeals against the order rejecting the applications for amendment and for interim injunction, allowed the appeal against the rejection of the plaint. Aggrieved by the same, the 1st defendant therein approached the Apex Court by filing appeal by way of Special Leave Petition, the Apex Court concluded that when the plaint does not disclose cause of action, the same shall be rejected.

The law declared by various High Courts is that Order VII Rule 11 of C.P.C. makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial Court can exercise the power under Order VII Rule 11 of C.P.C. at any stage of the suit i.e. before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under Clauses (a) and (d) of Rule 11 of Order VII Code of Civil Procedure, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant to decide the application filed under Order VII Rule 11 of C.P.C. But curiously in *T.ARIVANDANDAM V. T.V.SATYAPAL AND ANR.* (referred supra) the Apex Court has held at paragraph 5 of its judgment which reads as follows:

“5. ...The learned Munsif must remember that if on a meaningful – for formal – reading of the plaint it is

manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11 Code of Civil Procedure taking care to see that the ground mentioned therein is fulfilled. and if clever drafting has created the illusion of a cause of action nip it in the bud at the first hearing by examining the party searchingly under Order X, Code of Civil Procedure An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr.XI) and must be triggered against them....

It is clear that if the allegations are vexatious and meritless and not disclosing a clear right or material(s) to sue, it is the duty of the trial Judge to exercise his power under Order VII Rule 11. If clever drafting has created the illusion of a cause of action as observed by Krishna Iyer J., in the above referred decision, it should be nipped in the bud at the first hearing by examining the parties under Order X of the Code."

Applying the principle laid down in *T.ARIVANDANDAM V. T.V.SATYAPAL AND ANR.* (referred supra), the Court can reject the plaint only at the time of first hearing by examining the parties under Order X of C.P.C. but not based on application filed under Order VII Rule 11 of C.P.C. Therefore, it is obligatory on the part of the Court to find out whether the allegations made in the plaint would give raise to any cause of action or plaint discloses any cause of action for the suit.

What is cause of action is again a question to be decided and in the same judgment, the Apex Court relied on judgment rendered

in *A.B.C. LAMINART PVT. LTD. AND ANR. V. A.P. AGENCIES, SALEM*⁷

wherein the word “cause of action” is defined as follows:

“Cause of action is a bundle of facts which taken with the law applicable to them gives the Plaintiff a right to relief against the Defendant. It must include some act done by the Defendant since in the absence of such an act no cause of action can possibly accrue.”

In *BLOOM DEKOR LTD. V. SUBHASH HIMATLAL DESAI AND*

*ORS.*⁸ the word “cause of action” is defined as follows:

“Cause of action means every fact, which, if traversed, it would be necessary for the Plaintiff to prove in order to support his right to a judgment of the Court.”

Thus, in view of law declared by the apex court, cause of action has to be taken in its wider meaning and if any allegation is made prima facie by the respondents, then it is the obligation of the plaintiffs to prove such allegation in support of his contention.

Here in this case, the allegation made in the plaint is that the father of first defendant i.e., grand father of the plaintiff purchased the property and later the first defendant sold the property to the revision petitioner by executing the registered document while admitting the source of acquisition of the property i.e., ancestral property and apart from that, the respondents averred in the plaint that they requested the defendants 1 to 6 for partition of the plaint schedule property to avoid future complications since D.1 became old. But they did not comply the demand made by the plaintiff,

⁷ (1989) 2 SCC 163

⁸ (1994) 6 SCC 322

therefore, the act done by the plaintiffs and refused by the defendants would give rise to a cause of action to file a suit for partition. In those circumstances, the allegations made in the plaint would suffice to constitute cause of action to file the suit for partition and other reliefs but at this stage, the defence raised by the counsel for the defendants in the suit by filing a written statement is wholly insignificant to decide the application under Order 7 Rule 11 read with section 151 C.P.C.

Learned counsel for the petitioner has drawn the attention of this court to a judgment of the Division Bench of this Court reported in *GADIYARAM PADMAVATHI v. HANUMANTHA RAO* ⁽⁹⁾ wherein the Division Bench of this court held that based on unnecessary litigation or an artificial litigation for an undue gain, the same should be treated as an 'abuse' and the Court is vested with the power to curtail such a litigation.

There is no dispute regarding law declared in *GADIYARAM PADMAVATHI v. HANUMANTHA RAO* (referred above) by the Division Bench of this Court but even according that decision, plaint be can rejected only at the stage of examination of parties under Order X but not exercising under order 7 Rule 11 of C.P.C., the action of such clever drafting by an advocate creates a cause of action for the suit.

Dismissal of the application filed under order 7 Rule 11 of C.P.C. by the trial court, is justified and based on the law declared by

⁹ 2007 (6) ALD 388 (DB)

the apex court, the order passed by the trial court negating the relief of rejection of plaint under order 7 Rule 11 C.P.C. suffers from no legal infirmity warranting interference by this court while exercising the powers under Art 227 of the Constitution of India which is limited in its nature. Accordingly, the point is answered in favour of the respondents and against the petitioner.

The second ground urged before this court for rejection of plaint is that the suit was not properly valued.

In view of the specific contention, it is necessary to advert the Order VII Rule 11 (C) C.P.C. to decide the power of this court to reject the plaint filed under Order 7 Rule 11 of C.P.C.

The plaint shall be rejected in the following cases:

- (a) *where it does not disclose a cause of action;*
- (b) *where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) *where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) *where the suit appears from the statement in the plaint to be barred by any law.*

Here, the contention of the petitioner is that it was not properly valued. Hence, I am not inclined to record any findings about the sufficiency of court fee under Section 34 (1).

The other ground urged before this court is that discrepancy of family pedigree, that is also not a ground under Order 7 Rule 11 to reject the plaint.

In view of my foregoing discussion, more particularly, on point No.1, the plaint shall not be rejected based on the contention that the plaint does not disclose any cause of action, and thereby order passed by the trial court is a reasoned order supported by legal position and such order cannot be interfered while exercising power under Article 227 of the Constitution of India. Therefore, I find no merits in the revision and as such, the same is liable to be dismissed.

In the result, this Civil Revision Petition is dismissed at the stage of admission. However, it is left open to the petitioner to raise all his pleas.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE M.SATYANARAYANA MURTHY

Dated 23-12-2016.

Dvs.

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Dated 23-12-2016.

Dvs