

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.1252 OF 2016

ORDER

By docket order dated 29.01.2016 passed in S.R.No.145 of 2016 in O.S.No. ____ of 2016, the learned III Additional District Judge, Bhimavaram, rejected the suit at the stage of numbering. Aggrieved thereby, the plaintiff in the suit is before this Court under Article 227 of the Constitution.

As the suit was rejected even before it was numbered, this Court deems it unnecessary to put the respondents, the defendants in the suit, on notice.

The suit was filed by one Tanguturi Venkateswara Rao for the following reliefs:

‘...to pass a Judgment and Decree in favour of the plaintiff and against defendants Nos. 1 to 3 as follows:

- A. For a permanent injunction restraining the defendant Nos. 1 to 3, their men or agents from alienating the suit schedule properties to 3rd parties.
- B. Pass a preliminary decree in favour of plaintiff, against the defendant Nos. 1 to 3 with joint and several liability for an amount of Rs.30,79,200/- with interest at 24% per annum on Rs.18,00,000/- from the date of suit till the date of realization and also grant a personal decree against the defendant Nos. 1 to 3, or in the alternative,
- C. Directing the defendant Nos. 1 to 3 to pay the suit amount of Rs.30,79,200/- (Rupees Thirty Lakh seventy nine thousand and two hundred only) together with future interest to the plaintiff.
- D. Directing the defendant Nos. 1 to 3 to pay costs of suit to the plaintiff.
- E. Grant such other and further reliefs as this Hon'ble court deems fit and proper in the circumstances of the case.’

Perusal of the docket order under revision reflects that the trial Court cited the following reasons for rejecting the suit: The suit was

based on a promissory note executed in Ranga Reddy District but the suit was filed seeking a preliminary mortgage decree over a property in Bhimavaram Mandal in West Godavari District, which stood in the name of the third defendant. No mortgage deed was executed in favour of the plaintiff in relation to the said property and defendants 2 and 3 were not liable. Lastly, as the promissory note was executed at Ranga Reddy District, the Court at Bhimavaram had no territorial jurisdiction merely because the immovable property shown in the plaint was situated at Dirusumarru Village in Bhimavaram Mandal.

Order 7 Rule 11 CPC deals with the power of the trial Court to reject a plaint. Though Clause (a) thereof empowers the trial Court to reject a plaint where it does not disclose a cause of action, an exercise in that regard by the trial Court should not involve evaluation of the merits of the case. If, on a plain perusal of the plaint, the trial Court finds no cause of action arising from the averments therein it can reject the suit in exercise of the power conferred by Order 7 Rule 11(a) CPC.

In the present case, the plaint averments were to the effect that the plaintiff and one S.V.Subrahmanyam gave loans to the first defendant for purchase of a property and the first defendant issued them promissory notes. That apart, he also deposited with them the original sale deed of the property purchased by him in the name of the third defendant, which was thereafter returned to him under acknowledgement. The suit prayer was for a permanent injunction and a preliminary mortgage decree or for recovery of the suit amount along with costs.

Given the aforestated plaint averments, this Court finds that the exercise undertaken by the trial Court was far in excess of that permitted under Order 7 Rule 11(a) CPC. The trial Court examined in detail the merits of the suit claim and went to the extent of condemning the petitioner/plaintiff for concocting stories so as to seek attachment of the property of the third defendant. Findings were also recorded as to whether the property in question was a separate property or a joint family property and the liability of defendants 2 and 3.

The last ground cited by the trial Court for rejecting the plaint was that it had no territorial jurisdiction. Sri M.V.S.Suresh Kumar, learned counsel for the petitioner/plaintiff, pointed out that the suit was filed for a preliminary mortgage decree and that the property covered by the alleged mortgage was situated within the jurisdiction of the trial Court. That apart, the defendants were shown as residents of Bhimavaram, West Godavari District. As to whether a mortgage was actually created or not is an issue which requires adjudication by the trial Court but even if this aspect is eschewed, Section 20 CPC postulates that a suit may be filed in a Court within the limits of whose jurisdiction the defendants reside or where the cause of action, wholly or in part, arises. Once it was shown that the defendants in the suit resided within the jurisdictional limits of the trial Court, the finding to the effect that the Court lacked jurisdiction only because the suit promissory note was executed elsewhere cannot be countenanced.

On the above analysis, this Court finds that the exercise undertaken by the trial Court for rejecting the suit at the stage of numbering exceeded its power to do so under Order 7 Rule 11 CPC. The trial Court practically decided issues arising in the suit on merits, which was not open to it at the stage of numbering of the suit. The lack of application of mind by the trial Court is further demonstrated by the fact that even the cause title is wrongly shown. Time constraints notwithstanding, the trial Court is expected to be mindful of such trivial aspects which would invariably reflect upon the level of judicial performance.

The docket order dated 29.01.2016 passed by the trial Court is accordingly set aside. The trial Court is directed to number the suit, if it is otherwise found to be in order, and proceed in the matter in accordance with law.

The civil revision petition is allowed. Pending miscellaneous petitions shall stand closed. No order as to costs.

26th APRIL, 2016

Svv

SANJAY KUMAR, J