

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3604 OF 2016

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed challenging the Order, dated 04.04.2016, in I.A. No.294 of 2016 in O.S. No.221 of 2015, passed by the XI Additional Chief Judge, City Civil Court, Hyderabad, whereby declined to reject the plaint on the ground of non-disclosure of cause of action in the plaint.

02. The ranks given to the parties in the suit will hereinafter be adopted through out this Order, for convenience.

03. The plaintiff filed suit in O.S. No.221 of 2015 before the XI Additional Chief Judge, City Civil Court, Hyderabad, for grant of perpetual injunction restraining the defendants, their men, subordinates or anyone claiming through or under them from interfering with the plaintiffs right, title and interest and peaceful possession in and over the suit schedule property in any manner whatsoever including executing any kind of document of conveyance pertaining to the suit schedule property which is more fully described in the schedule.

04. It is the case of the plaintiffs that they purchased the House bearing No.8-2-120/120/A/5 on Plot No.14 situated at DJMH Plot No.19, Road No.10, Banjara Hills, Hyderabad, under registered document bearing No.685/1994 from one B.Chakramma, W/o.Parandhamaiah. Since then, she is in possession and enjoyment of the property. The first defendant, without any manner of right or title over the schedule property,

in pursuance of registered agreement of sale-cum-general power of attorney, tried to convey the property, which is inclusive of the suit schedule property, in favour of the second defendant (proposed purchaser). It came to the knowledge of the plaintiffs on 10.04.2015.

05. The plaintiff further contended that the person from whom the first defendant obtained agreement of sale-cum-general power of attorney has no subsisting right, title or interest in the property to execute the same and as such any document executed in favour of the first defendant is null and void as the petitioner purchased the property and in possession of the same, much prior to the document claimed by the first defendant and sought the aforesaid reliefs.

06. After appearance, the first defendant, who is the revision petitioner herein, filed application under Rule 11 of Order VII read with Section 151 of the Code of Civil Procedure, 1908 (for short, 'CPC') to reject the plaint on the sole ground that the plaint does not disclose any cause of action alleging that the first defendant and the plaintiff are claiming title over the suit schedule property and the circumstances in which the suit was filed for bare injunction is not maintainable, moreover the plaint does not disclose any cause of action specifically for filing the suit. On bare reading of plaint, reveals that the same is bereft of cause of action and no specific allegations are made with regard to the cause of action. Therefore, the suit itself is filed on apprehension and without any support of the contentions of the plaintiff.

07. The first defendant also claimed possession over the schedule property and thereby assertion of the plaintiff that she is in possession of the property is far from the truth and the plaint does not disclose any cause of action to claim any of the reliefs referred to supra and prayed to reject the plaint.

08. The plaintiff filed counter admitting filing of the suit for the aforesaid reliefs, while contending that the first defendant did not approach the Court with clean hands and is guilty of suppression and misrepresentation of facts and that the plaint discloses the necessary facts to constitute cause of action which is bundle of facts and specific allegation is made that in case of alleged agreement of sale-cum-general power of attorney which came to the notice of the plaintiffs that the first defendant is trying to alienate the property to create interest in favour of the second defendant. Therefore, the plaint discloses cause of action for the aforesaid claims and prayed for dismissal of the petition.

09. Upon hearing the counsel for the first defendant and the counsel for the plaintiff, the trial court dismissed the petition holding that the plaint discloses cause of action.

10. Aggrieved thereby, the present revision petition is filed on various grounds mainly contenting that the property is not identifiable with reference to boundaries as required under Rule 3 of Order VII of CPC as laid down by the Apex Court in **PRATIBHA SINGH AND ANOTHER V. SHANTI DEVI PRASAD AND ANOTHER**¹ and that furnishing of boundaries of the plots

¹ (2003) 2 SCC 330

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without names of the owners and without details of any sanctioned lay out, suit is not maintainable, since it would not give raise to any cause of action for filing the suit and finally prayed to set aside the Order under challenge allowing I.A. No.294 of 2016 in O.S. No.221 of 2015, rejecting the plaint by exercising power under sub-Rule (a) of Rule 11 of Order VII of the CPC.

11. During hearing, Sri V.V. Ramana, learned Senior Counsel appearing for the revision petitioner/ first defendant, contended that the plaint does not disclose any cause of action, since the plaint is bereft of required details with regard to the property and there is a dispute regarding the ownership and possession, in such case, the plaint has to be thrown out at the threshold stage and has placed reliance on the Judgments of the Apex Court in **T.ARIVANDANDAM V. T.V. SATYAPAL AND ANOTHER²** and **SOPAN SUKHDEO SABLE AND OTHERS V.ASSISTANT CHARITY COMMISSIONER AND OTHERS³** in support of his contention and prayed to allow the revision petition setting aside the Order passed by the trial court and reject the plaint.

12. Per contra, Sri S. Malla Rao, learned counsel for the first respondent/ plaintiff, while contending that truth in the cause of action is different from disclosure of cause of action in the plaint and truth or otherwise in the cause of action mentioned in the plaint has to be decided at the fag end of the trial and truth in the cause of action cannot be decided in a

² (1977) 4 SCC 467

³ (2004) 3 SCC 137

petition under Rule 11 of Order VII of CPC and when the plaint disclosed specific cause of action, the same cannot be rejected exercising power under Rule 11 of Order VII of CPC, drawn the attention of this Court to the Judgment of the Apex Court in **A.K. GUPTA AND SONS LTD. V. DAMODAR VALLEY CORPORATION**⁴ and to another Judgment of this Court in **AHMED NAWAB ALLADIN V. HYDERABAD INDUSTRIES LTD., HYDERABAD**⁵. On the strength of the law declared by the Apex Court and this Court, learned counsel for the first respondent/ plaintiff requested this Court to dismiss the revision petition in view of limited jurisdiction of this Court under Article 227 of the Constitution of India.

13. Considering rival contentions, perusing the material available on record, the sole point that arise for consideration is,

“Whether the plaint in O.S. No.221 of 2015 disclosed “cause of action” to claim relief, i.e. in clause (a) of the prayer portion?”

POINT:

14. The suit is filed for injunction simplicitor by the plaintiff to restrain the defendants and their men from interfering with the right, title and interest and peaceful possession of the plaintiff over the schedule property in any manner whatsoever. The relief claimed in the plaint falls within the ambit of Section 38 of the Specific Relief Act, 1963. A perpetual injunction may be granted to the plaintiff to prevent the breach of obligation existing in her favour whether expressly

⁴ AIR 1967 SC 96

⁵ 2015(3) ALD 584

or by implication or when any such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II. Sub-Section (3) of Section 38 of the Specific Relief Act, 1963 is relevant, which says that when the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely (a) where the defendant is trustee of the property for the plaintiff; (b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion; (c) where the invasion is such that compensation in money would not afford adequate relief; (d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

15. In the present suit, the plaintiff complaining that taking advantage of agreement of sale-cum-general power of attorney, the first defendant is trying to create interest in immovable property in favour of the second defendant and the executant of agreement of sale-cum-general power of attorney had no right or title to the property in dispute and it came to the notice of the plaintiffs only on 10.04.2015. Therefore, sought for perpetual injunction to restrain the defendants from interfering with the plaintiff's right, title or interest over the property, so also peaceful possession, but there is no allegation in the entire plaint that the defendants invade or threatens to invade the legal right or obligation of the plaintiff so far as the possession for grant of injunction to restrain from interfering with the possession of the plaintiff, but made a specific allegation at

paragraph 5 of the plaint that the first defendant is trying to create interest in the immovable property in pursuance of the agreement of sale-cum-general power of attorney and that if the first defendant is not restrained from alienating the property, certainly, it would amount to infringement or invasion of the legal right or title of the plaintiff, which falls within the ambit of Clause (c) of sub-Section (3) of Section 38 of the Specific Relief Act, 1963 that gives rise to cause of action for filing the suit claiming injunction simplicitor to restrain the defendants their men from interfering with the right, title and interest over the suit schedule property. However, there is nothing to show that the defendants tried to infringe or invade the lawful possession of the plaintiff. Thus the plaint does not disclose cause of action to claim perpetual injunction restraining the defendants from interfering with the possession and enjoyment of the property, but disclosed cause of action to grant perpetual injunction restraining the defendants and their men from interfering with the right, title and interest in the property. Thus, the plaint disclosed the cause of action for part of the relief.

16. Learned counsel for the first defendant/ revision petitioner mainly contended that plaint does not disclose the details as required under Rule 3 of Order VII of CPC. As seen from the schedule annexed to the plaint, the schedule property is the House bearing No. 8-2-120/120/A/5 on Plot No.9 admeasuring 800 square yards or 664 square meters situated at DJMH plot No.19, Road No.10, Banjara Hills, Shaikpet Village,

Golconda Mandal, Hyderabad, A.P. within the following boundaries:

North: 66' wide road

South: Neighbour's House on Plot No.12

East: Neighbour's House on Plot No.9 & 10

West: Neighbour's House on Plot NO.15.

17. Rule 3 of Order VII of CPC mandates that where the subject matter of the suit is immovable property, the plaint shall contain description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers. In the present case, the schedule specified the house number, extent, plot number, area where the property is situated i.e. location and the boundaries, so as to enable the parties to identify the subject matter of the property. Therefore, on that ground, the plaint shall not be rejected.

18. Sri V.V. Ramana, learned Senior Counsel for the first defendant, drawn the attention of this Court to a Judgment of the Apex Court in **T.ARIVANDANDAM**'s case referred to supra, wherein the Apex Court while considering the impact of non-disclosure of cause of action, details constitute the cause of action held, at paragraph 5, as follows:

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court,

Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful-not formal-reading of the complaint it is manifestly vexatious, and merit less, in the sense of not disclosing a clear right to sue, he should exercise his power under Or.VII r.11 C.P.C. 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 C.P.C. An activist Judge is the answer to irresponsible Law suits. The trial courts should 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. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:

“It is dangerous to be too good.””

19. In the facts of the above Judgment, clever drafting of complaint by an Advocate gave rise to cause of action for filing the suit. But the Apex Court went to the extent of holding that when the facts pleaded in the complaint are vexatious and frivolous and merit-less, after examining the parties under Order X of CPC, the trial court can reject the complaint. But the stage in the present suit is not known whether the parties were examined under Order X of CPC or not. Therefore, the principle laid down in the above Judgment cannot be applied to the present facts, at this stage.

20. Relying on the Judgment referred above, the Apex Court in **SOPAN SUKHDEO SABLE**'s case referred to supra reiterated the same principle and at paragraph 15 held as follows:

“15. There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction or words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.”

21. Even if the principle laid down in the above Judgment is applied to the present facts of the case, it is not the appropriate stage to pass an Order rejecting the plaint by exercising power under Rule 11 (a) of Order VII of CPC.

22. Sri S.Malla Rao, learned counsel for the first respondent/ plaintiff, drawn the attention of this Court to the Judgment of this Court in **AHMED NAWAB ALLADIN**'s case referred to supra to contend that the truth in the cause of action cannot be decided while exercising power under Rule 11 of Order VII of CPC, and, at best, the Courts duty is to see whether the plaint discloses cause of action or not. In the above referred Judgment, this Court declared the law as follows:

“Existence of “cause of action” is a sine qua non, for a suit. It is only when the same is said to be existing, that a suit can be maintained. The expression “cause of action” is not amenable to any precise definition or even

description. The jurists and courts opined that cause of action is a bundle of facts, which independently or in tandem, confer right upon the plaintiff to seek remedy in the Court. Some times, a single act may give rise to the cause of action, and on other occasions, it may be a series of events, that have taken place between the parties, over a long period. Obviously to be on safe side, the clause, pertaining to cause of action, in a plaint, is drafted in such a way, that it takes in its fold, every act and omission of the parties in relation to the subject-matter.”

23. In the earlier Judgment of the Apex Court, in **A.K. GUPTA**’s case at paragraph 9 defined the word ‘cause of action’ and on applying the principles laid down in the above two decisions that it is the duty of the trial court to find out whether the plaint disclosed cause of action in the plaint or not and if the trial court satisfied that the plaint does not disclose cause of action, the plaint shall be rejected under Rule 11(a) of Order VII of CPC. In the present suit, the plaint disclosed cause of action in part of the reliefs but does not disclose of action for part of reliefs i.e. for the relief to restrain the defendants from interfering with the possession. In such case, the plaint shall not be rejected partly in view of the principle laid down by the Apex Court in **A.K. GUPTA**’s case, referred to supra that the plaint cannot be rejected partially. In view of the principles laid down in the above Judgment, it is difficult for me to exercise power under Rule 11(a) of Order VII of CPC to reject the plaint for non-disclosure of cause of action for the part of the relief.

24. The jurisdiction of this Court under Article 227 of the Constitution of India is supervisory in nature and this Court can

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exercise such power only to keep the subordinate Courts and Tribunals within its limitations, call for returns from such courts; make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

25. The Apex Court, as early as in the year 1955, in **HARI VISHNU KAMATH VS. SYED AHMAD ISHAQUE AND OTHERS**⁶ laid down certain guidelines regarding the jurisdiction to be exercised under Article 227 of the Constitution and also in view of the settled principles of law referred in the Judgment of the Apex Court in **SURYA DEV RAI V. RAM CHANDER RAI AND OTHERS**⁷ I find no grounds to interfere with the Orders passed by the trial court at this stage. Hence, the civil revision petition is liable to be dismissed as it is devoid of merits.

26. In the result, the civil revision petition is dismissed.
No costs.

27. Miscellaneous petitions, if any, pending in this civil revision petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 17.09.2016
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⁶ 1955 1 SCR 1104

⁷ 2003(6) SCC 675