

*** HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

+ CIVIL REVISION PETITION No. 5255 of 2009

% 27th August, 2016

Sri M. Bala Shirish and 3 others

... Petitioners...

AND

\$ Sri Shivraj Heda and another

... Respondents...

! Counsel for the Petitioners : Sri P. Bhakthavatsal

^ Counsel for the respondents : Sri R. Chandra Shekar Reddy

< Gist:

> Head Note:

? Cases referred:

1. 2004 (6) ALT 454 (D.B.)
2. 2009 (1) ALT 152
3. 1996 (8) SCC 377

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.5255 OF 2009

ORDER:

This Civil Revision Petition is filed aggrieved by the order dated 02.01.2009 passed in O.S.S.R.No.12774 of 2008 by the learned I Additional Chief Judge, City Civil Court at Secunderabad.

The revision petitioners are the plaintiffs and they filed a plaint before the Court below on 27.11.2008 seeking following relief:

- a) Cancel the Registered sale deed document No.2800/2008, dated 15.12.2007 in respect of the suit schedule property;
- b) Consequential injunction to restraining the defendants, his agents, legal representatives, servants and such other person or persons from interfering with the suit schedule property;
- c) Costs of the suit and
- d) Any other relief or reliefs to which the plaintiffs are entitled thereto;

and the said plaint was given number as O.S.S.R.No.1277 of 2008, and by an order dated 02.01.2009 the plaint was rejected by the learned Judge. When the plaint was presented the office had taken the following objections:

- i) The educational qualification of the plaintiffs 1 to 4 may be mentioned.
- ii) The plaintiffs mentioned in the plaint that they were under impression that they were executing a mortgage deed on 15.12.07 in favour of the defendant No.1. It may be mentioned when it was detected by the plaintiffs that it is a sale deed.
- iii) In the sale deed it is mentioned that agreement of sale cum G.P.A. was also executed on 30.06.06 and registered in favour of the defendant No.1 in respect of the suit schedule property. It may be mentioned what is the impression entertained by the plaintiffs when they executed the aforesaid agreement of sale deed.
- iv) It is mentioned in the plaint that the defendant No.2 used force, coercion etc., against the plaintiff No.2 on several occasions during the year 2006 also. It may be mentioned whether any police complaint was given and action was taken against the defendant No.2 during 2006.
- v) It may be mentioned why the legal notice was not issued and suit was not filed after 30.06.06 or immediately after 15.12.07.
- vi) The transaction is between the plaintiffs and defendant No.1 in respect of sale deed dt.15.12.07 and various allegations against defendant No.2 and the name of defendant No.2 deleted, and the plaintiffs can take action against defendant No.2.

The above objections were duly answered by the petitioners as follows:

- i) Educational qualifications
 - a) Plaintiff No.1 – Engineering student
 - b) Plaintiff No.2 – Graduate
 - c) Plaintiff No.3 – Intermediate
 - d) Plaintiff No.4 – 4th class.
- ii) The plaintiff come to know about the fraud of defendants i.e., Mortgage Deed as Sale Deed, on 16.12.2007, which is mentioned in the plaint in page No.4.
- iii) In respect of the alleged agreement of Sale dated 30.06.2006, then also the plaintiffs were put to same impression that the said document was some document for security purpose for loan such as mortgage, but out of fear and threat by the defendant NO.2, the plaintiffs were not in a position to know about the nature of the document.
- iv) The police complaint was given on 16.12.2007 in respect of the sale deed pertaining to suit schedule property earlier to which also Police complaints were given but of no avail.
- v) The plaintiffs have filed a private complaint before the X Addl.M.M., Secunderabad in this matter and the same was referred to Police, Chilkalaguda and the matter is under investigation. FIR is also registered. Under these circumstances, issue of legal notice will not serve any purpose. Further the suit was not filed after 30.06.2006, as the plaintiffs were not put to knowledge about the nature of the document.
- vi) Various allegations made against D-2, as the D-2 is actual culprit he is the only person caused irreparable loss and injury and also threat to his life and his family, which is still a dangling sword, and as said above police investigation is now began.

The court below in two paragraphs dealt in detail with respect to the merits and demerits of the case of the petitioners and refused to accept the argument of the learned counsel for the petitioners that at the time of numbering the suit the Court cannot and shall not deal with the merits of the matter and the plaint as filed had to be taken on record. Having considered the arguments of the learned counsel for the petitioners, the Court below observed as follows:

- “8. I am unable to accept this line of argument since the principle that while numbering the plaint the contents of the plaint only are relevant, is applicable to certain cases but not all cases. The mere perusal of complaint and the impugned sale deed would show that there is no proper

cause of action to file the suit and the so called cause of action is created for filing this suit.

9. In the result, the plaint is rejected.”

Challenging the above order the present Civil Revision Petition is filed.

Learned counsel for the petitioner Sri P. Bhakthavatsal by placing reliance on the judgments of this Court in **T.N. Khambati and others V. Government of A.P., Revenue Department and others**^[1] and **Mohd. Abdul Wahab V. State Bank of Hyderabad, Mahabubnagar**^[2] submits that the Court below had travelled beyond the scope of examination of the plaint at the time of numbering and without proper assessment of the facts by conducting an inquiry, rejection of plaint at the threshold holding that there was no proper cause of action to file the suit and the so called cause of action is crept for filing the suit, is totally arbitrary and illegal and prays for setting aside of the same.

Having considered the submissions of the learned counsel for the petitioners, this Court has observed that this is one of the classic cases where a precious period of eight years has elapsed on account of improper exercise of the power by the Court below, that too by a District Judge. The power to reject the plaint rests with the Court in terms of Order VII Rule 11 of the Code of Civil Procedure. Order VI of CPC mandates what are the necessary particulars and details that are required to be set out in the plaint. In the present case, it is not the case of the Court below that any of the particulars as required to be stated in terms of Order VI Rules 1 to 8 are not complied with. It is also not the case of the Court below that the Court was exercising the power under Order VII Rule 10 of CPC for returning of the plaint on the ground of the plaint not being presented before the Court of the appropriate jurisdiction. The Hon'ble Supreme Court in **State of**

Orissa Vs Klockner and Company & Others^[3] held that while exercising jurisdiction under Order VII Rule 11 (a) of CPC, the trial Court has to see whether plaint discloses the cause of action or not, but the Trial Court is not required to examine whether the plaintiff has cause of action to file the suit or not.

The order of the Court is specifically and categorically states that the plaint is rejected. The only provision under which the Courts power can be traced is Order VII Rule 11. The rejection of plaint has been made on the ground that there is 'no proper cause of action' to file a suit and the cause of action was invented for the purpose of filing of the suit. The observations of the nature with respect to the adequacy or inadequacy of the cause of action is hardly necessary as it is a matter of the appreciation of the material placed after filing of the written statement. It is well settled that cause of action may consists of a bundle of facts and events. While deciding to accept or to reject a plaint, what is to be seen is only the averments made in the plaint. If the plaint discloses a cause of action but the averments do not show that the suit is barred by any law, the defects cannot be looked into to reject the plaint. The suit is filed alleging that the defendants got executed the document in issue deceitfully and fraudulently with *mala fide* intentions and ulterior motives and by exerting undue influence, physical force against the plaintiffs and without there being any consideration. These are all the aspects which require leading of evidence and the veracity of the pleadings cannot be decided at the stage of numbering of the suit. There is a clear allegation of a fraud having been played on the plaintiffs/petitioners by the defendants in getting the document executed. The relief claimed is in terms of Section 31 of the Specific Relief Act, 1963.

In those circumstances, the rejection of the plaint cannot be sustained and it is not necessary for this Court to advert to the plethora of case law on the subject as law is well settled as of now.

Accordingly, this Civil Revision Petition is allowed, setting aside the order dated 02.01.2009 in O.S.S.R.No.12774 of 2008 passed by the learned I Additional Chief Judge, City Civil Court at Secunderabad, with a direction to the learned I Additional Chief Judge, City Civil Court at Secunderabad, to number the suit and take necessary further steps.

There shall be no order as to costs. Miscellaneous petitions pending, if any, shall stand closed.

CHALLA KODANDA RAM, J

Dated:27.08.2016

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[\[1\]](#) 2004(6) ALT 454 (D.B.)

[\[2\]](#) 2009 (1) ALT 152

[\[3\]](#) 1996 (8) SCC 377