

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA PRADESH**

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**CIVIL REVISION PETITION No.365 of 2016**

Between:

Smt. Kavitha Balaji and another

.....Petitioners

and

The State of Telangana and 12 others

.....Respondents

Date of Judgment pronounced on : 22-08-2016

**HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**

1. Whether Reporters of Local newspapers : Yes/No  
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No  
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No  
Of the Judgment?

**\* HON'BLE DR. JUSTICE B. SIVA SANKARA RAO****+ CIVIL REVISION PETITION No.365 of 2016**

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**< GIST:****> HEAD NOTE:**

! Counsel for the petitioners : Sri Prabhakar Sripada

^ Counsel for the respondents : ---

**? Cases referred**

1. 1994 LawSuit (del) 3
2. (2006) 3 SCC 312
3. 2015 (4) ALD 409 (DB)
4. (2015) 1 SCC 379
5. 2011 (4) ALD 775
6. 2015 (3) ALD 641
7. (2008) 12 SCC 661
8. (2004) 9 SCC 512
9. (2007) 14 SCC 183
10. (2005) 7 SCC 510
11. 2014 (6) ALD 218
12. 2015 (3) ALD 584
13. 2010 (4) ALD 273

**HON'BLE DR. JUSTICE B. SIVA SANKARA RAO****CIVIL REVISION PETITION No.365 of 2016****ORDER:**

The plaintiffs in the unnumbered suit OSSR.No.6407 of 2015, aggrieved by the order of the trial Court dated 27.08.2015 running in 13 pages rejecting the plaint under Order VII Rule 11(a) and (f) CPC on the grounds of no cause of action and no compliance with filing of process with plaint copies to the defendants, impugning the same maintained the present revision under Article 227 of the Constitution of India.

This Court when came for admission raised objections on maintainability from the alternative remedy of appeal against the order of rejection available as statutory remedy. The learned counsel placed reliance on several expressions of which the expression of the Delhi High Court in **Morgan Stanlay Mutual Fund Vs. Piyush Aggarwal**<sup>1</sup>, observed at Para 6 that the power of the superintendence under Article 227 of the Constitution of India given to the High Court for the purpose of seeing justice is meted out fairly and properly and instead of exercising its power under Article 227 even it can direct the petitioner to move application against the ad interim exparte injunction, under Rule 4 of Order 39 or file appeal, from the date of commencement of public issue is 06.01.1994 within 2 days thereafter it becomes futility and no purpose will be served giving such directions. Though where appeal is proved, this Court could not interfere by any peremptory order with the ordinary course of jurisdiction, we cannot loose sight of the fact that in cases wherein grave wrong is manifested

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<sup>1</sup> 1994 LawSuit (del) 3

and if allowed to continue it may cause ir-repairable loss by following regular procedure, Court must exercise its discretionary jurisdiction under Article 227 of the Constitution of India. The other decision placed reliance is in **Kishore Kumar Khaitan and Another Vs. Praveen Kumar Singh**<sup>2</sup>, where at Para 13 the Apex Court held that exercise of jurisdiction under Article 227 of the Constitution of India behoved the High Court to consider whether the order of interim injunction is supported by necessary findings. The jurisdiction under Article 227 of the Constitution of India may be restrictive in the sense that it is to invoke to correct errors of jurisdiction. But when a Court asks itself a wrong question or approaches the question in an improper manner, even if it comes to a finding of fact, which cannot be said to be one rendered with jurisdiction and it will still be amenable to correction at the hands of the High Court under Article 227 of the Constitution. The other decision placed reliance is of Division Bench of this Court in **P.Madhusudhan Rao Vs. Lt. Col. Ravi Manan and Another**<sup>3</sup>, it was held at Paras 12 to 14 that the High Court can exercise the supervisory powers under Article 227 against the Courts subordinate to it or the Tribunals subordinate to it to keep the said inferior courts or Tribunal within the limits of their authority and that they did not cross the limits and only the wrong decisions may not be a ground for exercise of jurisdiction under Article 227. Unless the wrong is referable to Court, abuse of power or dereliction of duty, it results in grave injustice to any party. Thereby, discretionary power can be exercised sparingly with utmost care particularly in cases where inferior court assumes

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<sup>2</sup> (2006) 3 SCC 312

<sup>3</sup> 2015 (4) ALD 409 (DB)

jurisdiction erroneously in excess of power or refused to exercise jurisdiction or when found an error of law apparent on the face of record or outcome of violation of principles of natural justice or arbitrary or capricious exercise of jurisdiction or authority or finding arrived is perverse and based on no material or a patent or flagrant error in procedure or order in question resulting in manifest injustice or it is error on both facts and law or even otherwise. The other decision placed reliance is **Sameer Singh and Another Vs. Abdul Rab and Others**<sup>4</sup>, that availability of alternative remedy of statutory appeal is not a ground always not to exercise the power under Article 227 of the Constitution of India and on facts the executing Court where does not adjudicate the lis between the parties on the ground it has become functus officio and when it pertains to jurisdictional error which is revisable under Section 115 CPC and after amendment to the Section with effect from 01.07.2002 the power is exercisable under Article 227 of the Constitution of India in holding the revision is maintainable.

Thus this matter is taken up for hearing to go into the merits of the impugned order. Now when the Court chosen to order notice before admission or by admitting as the case may be, it is the submission by the learned counsel for the petitioner relying upon 2 expressions of this Court of no notice is contemplated before numbering stage when plaint is rejected. One is in **Dantala Praveen Vs. Bairaboina Veeramma and Others**<sup>5</sup>, holding since the impugned order of the learned District Judge was passed before notice to the proposed defendants in the suit, it is not

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<sup>4</sup> (2015) 1 SCC 379

<sup>5</sup> 2011 (4) ALD 775

necessary to put the proposed defendants on notice. In **Pujari Narsaiah Vs. Modem Sudhaker and Another**<sup>6</sup>, holding as the order under revision was passed by the trial Court even before registration of the suit by rejecting the plaint, this Court does not deem it necessary to put the respondents/defendants on notice in this case in entertaining the writ petition under Article 227 of the Constitution of India. Thus from the authorities, this Court satisfied that the unnumbered plaint from the office objections and on representation since rejected in disposal of the same, no notice is contemplated much less even under the principles of natural justice to the proposed defendants as respondents to the revision.

From this now coming to the scope of the impugned order and its sustainability, though the law speaks plaint can be rejected at any stage and the power of the Court to exercise the discretion, more particularly, even invoking Order 7 Rule 11 on any of the clauses (a) to (f); so far as clause (d) concerned, there are several expressions saying it is a mixed question of fact and law as to barred by law unless the plaint averments *per se* demonstrates the claim barred by law. The rejection is even not on that ground leave about the factual scenario no way fit to reject on that ground.

So far as clauses (e) and (f) concerned, these are procedural compliance with number of copies to be supplied to the proposed defendants with the process and summon forms and filing of plaint in duplicate as contemplated by Order VII Rule 9 CPC. No doubt as pointed out by the learned counsel for the revision petitioner, Rule 9 compliance as per the amended CPC with effect from

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<sup>6</sup> 2015 (3) ALD 641

01.07.2002 arises only after numbering of the plaint with a direction to the plaintiff to present as many copies of the plaint as there are defendants, within 7 days from such date of order along with requisite fees for service of summons on the defendants. Thus the rejection on that ground either of clauses (e) or (f) is premature without numbering, as the compliance shall arise after numbering. Thereby on that ground rejection of the plaint is not sustainable.

Coming to the other ground on which the plaint rejected is under Order VII Rule 11 (a) CPC. It speaks that where the plaint on its reading does not disclose a cause of action. Cause of action is a bundle of essential facts and even as per Order VII Rule 1(e) what it speaks of the facts constituting cause of action and when it arose shall contain in the plaint, apart from Section 20 CPC speaks jurisdiction confers where cause of action in whole or part arises. The Apex Court in one of the expressions placed reliance in **Kamala and Others Vs. K.T. Eshwara Sa and Others**<sup>7</sup>, held for application of barred by law or not to decide the conclusion to be drawn to the Court is only by seeing the plaint averments and nothing more at that stage as issues on merits of the matter would not be within the realm of the Court at that stage and that too when a mixed question of fact and law not only examination of plaint, but also evidence and order to be passed if at all in the earliest that to be taken up as a preliminary issue at best rather than rejection of the plaint by dwelling into with roving enquiry. In so far as on ground of cause of action, this expression by referring to several other expressions held at Para 40, particularly from Para

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<sup>7</sup> (2008) 12 SCC 661

139 at page 562 of **Liverpool & London S.P. & I Association Limited Vs. M.V. Sea Success I**<sup>8</sup>, that whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in its entirety must be held to be correct. The test is as to whether if any of the averments made in the plaint are taken to be correct in their entirety, a decree would be passed and by referring to **C. Natrajan Vs. Ashim Bai**<sup>9</sup>, particularly at Para 8, it was observed that an application for rejection of the plaint can be filed if the allegations made in the plaint even if given face value in its entirety appear to be barred by any law. The questions whether barred by law or not depend upon the facts and circumstances of each case and for that purpose only the plaint averments are relevant and Court would be not entitled to consider the case of defence even as laid down in **Popat and Kotecha Property Vs. SBI Staff Association**<sup>10</sup>. The sum and substance of this expression for the cause of action exists or not to be considered for numbering the suit or reject the plaint at the numbering stage, before ordering summons to the defendants, is only from reading of a plaint, leave about even after appearance of defendants it is not the defence that to be looked but for by taking as if true the entire plaint allegations as a whole. Here the plaintiffs in their suit mentioned the cause of action Para specifically even and from reading of the plaint, it no way discloses the suit claim is barred by any law and lacks cause of action to sustain. The reading of the impugned order of the lower Court

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<sup>8</sup> (2004) 9 SCC 512

<sup>9</sup> (2007) 14 SCC 183

<sup>10</sup> (2005) 7 SCC 510

mainly shows though not made any ground might be that may not be a ground for rejection under Order VII Rule 11 (a) to (f), of discrepancy in the description of the property. Order VII Rule 3 CPC reads as follows, whether the subject matter of the suit is immovable property, the plaint shall contain the 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 of survey, the plaint shall specify such boundaries or numbers. Thus what is required is property capable of being identified. What it says is capable of identified by plaint averments with property description. What is further required if at all is such property can be identified by boundaries or numbers in a record of settlement of survey, those numbers or boundaries are if mentioned. The original plaint printed page 22 Xerox copy filed herein saying copy to the original contains schedule of property shown in document No.689 of 2012 dated 20.03.2012 executed by defendant Nos.7 to 12 in favour of defendant No.13 of that house bearing No.12/10/412-A totally admeasuring 876.66 square yards filing in TS.No.42 & 2, Block O & Q, Ward No.141 situated at Namalagundu, Seethaphalmandi, Secunderabad, bounded by North and South, neighbours property, West-road and East-lane and neighbours property. No doubt the plaint averments contain several allegations in relation to the previous dispute also and the conveyance and those extents in dispute to be adjudicated as the very suit filed is for the reliefs of cancellation of 6 conveyance deeds executed by 1<sup>st</sup> defendant in favour of defendant Nos.7 to 12 as document No.683 to 688 of 2012 and also the General Power of Attorney-cum-development agreement and for prohibitory

injunction against defendant Nos.7 to 13 from raising any constructions or creating third party interest over the property. Once it is the claim of the plaintiffs in saying what is the property that is alienated by 1<sup>st</sup> defendant in favour of defendant Nos.7 to 12 covered by registered sale deeds and those contained the schedule of properties and the list of documents contain those sale deeds and the sale deeds also contain locations sketch respectively, there is nothing more prima facie for numbering the plaint; in so far as description of property, but for to leave it to the defendants contest for ultimate decision therefrom if at all. In this regard the learned counsel for the revision petitioner also placed reliance on the expression in Banda Pulla Reddy Vs. Banda Lakshamma in A.S.No.47 of 1998 dated 06.03.2014 reads as follows:

“The Apex Court in Sheodhyan Singh Vs. MCT. Sanchara Kour [AIR 1963 SC 1879] held that in case identity of property was established, even the mistaken mention of plot number if any only be regarded as mis-description which does not effect the identity. Thus identity is the criteria rather than manner in which it was described. In the Ex.A.7 relied upon by the plaintiff which is the Khasarpahani of the year 1954-55(Which is a permanent revenue record of great value), it is mentioned that Sy.No.834/A is an extent of Ac.0.33guntas that belongs to one Banda Narasaiah and in the cultivation and enjoyment of Banda Pullaiah as Khariddar. Further, Sy.No.834/AA Ac.0.18 guntas which also belong to Banda Narsaiah and he is shown as a person in occupation and enjoyment as pattadar, not to mention S.No.834 in an extent of Ac.1-13 guntas. These are the patta lands of said Banda Narsaiah as pattadar and enjoyer as per column Nos.1,3,6 to 8,13 and 15 respectively. Thus, from this also besides, the existence of Sy.No.834/A of Ac.0.33 gts., as a separate item, the existence of Sy.No.834/AA of total Ac.0.18 guntas of land in the village is established to say the description for the same with that as survey number to identify given by the plaintiff is suffice as per Order VII Rule 3 of CPC described supra so

also from above proposition of the Apex Court in Sheodhyan Singh (supra).”

Having regard to the above and when the expressions more particularly of this Court in **K.N. Reddy Vs. Defence Personnel Co-op Housing Building Society Limited, Secunderabad**<sup>11</sup>, that once plaint disclose the description and cause of action in relation to the suit claim, Courts will not embark upon roving enquiry on these aspects while considering even of any application by defendants for rejection of plaint. The other expression of this Court in **Ahmed Nawab Alladin Vs. Hyderabad Industries Limited**<sup>12</sup>, particularly at Para 7 speaks clearly that Courts would prefer rather than rejecting plaint which is almost a rarity, to adjudicate the suits on merits, than to discard them at the threshold and Supreme Court has been taken consistently the view that only contents as a whole that to be read in taking into account for determining existence of cause of action and jurisdiction. The other expression referred is of **Mohd. Osman Ali Vs. Second Junior Civil Judge, City Civil Court, Hyderabad and Another**<sup>13</sup> that it is no part of the duty of the Court to examine, at the stage of scrutiny and registration of the suit, whether the plaintiff has adduced sufficient documentary evidence in support of his prayer in his suit, as if the plaintiffs fail to file proper material to substantiate his pleas, he will be doing so at his peril. But the Court cannot, at the scrutiny stage, insist on the plaintiff to file the documents in its opinion even relevant. The expression in **Dantala Praveen Supra** speaks that when plaintiffs explained the variance

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<sup>11</sup> 2014 (6) ALD 218

<sup>12</sup> 2015 (3) ALD 584

<sup>13</sup> 2010 (4) ALD 273

in survey number of the suit agreements in the plaint, it is not the duty of the Court at the numbering stage to involve itself in examination of the purported discrepancy in a minute manner and reject the plaint on such a ground at the threshold and such a procedure is not sanctioned by law and the Court below has made a perverse approach in rejecting the plaint presented by the plaintiff.

Having regard to the above and in the result, the revision petition is disposed of by setting aside the impugned order of the trial Court rejecting the plaint and the trial Court is required to number the suit if otherwise in order and thereafter needless to say the plaintiff shall submit the necessary copies of the plaint with documents to be supplied to the defendants with the process fee and summons forms before the date being fixed by the Court to comply.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

**JUSTICE Dr. B.SIVA SANKARA RAO**

Date: 22.08.2016

Note: L.R. Copy to be marked

(B/o)

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