

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.120 of 2016

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.04-11-2015 in I.A.No.290 of 2013 in O.S.No.139 of 2012 of the Additional Junior Civil Judge, Jangaon.

2. The petitioners herein are the defendants in the suit. The respondent/plaintiff filed the said suit against the petitioners for perpetual injunction restraining the petitioners from interfering with their alleged possession and enjoyment of the plaint schedule property. In the plaint, the respondent/plaintiff pleaded that he is the absolute owner, pattedar, possessor and actual occupant of the plaint schedule property, that he acquired it from his father, and that he was in peaceful possession and enjoyment of the said land. He alleged that the petitioners are strangers to the plaint schedule property and taking advantage of the absence of the respondent, they hatched a plan to grab the suit schedule property illegally and attempted to occupy the plaint schedule property.

3. Written Statement was filed by the petitioners disputing the suit claim.

4. Thereafter, it appears that the son of the respondent was impleaded as a party/defendant No.3 in

the suit on 09-10-2013.

5. The petitioners then filed I.A.No.290 of 2013 to reject the plaint on the ground that the cause of action mentioned in the para 6 of the plaint is imaginary one and that there is no cause of action to maintain the suit against the petitioners. In the said application, several new facts are pleaded. It is pleaded that the respondent is the brother of 1st petitioner, that he was adopted by one Gattu Yellaiah and Gattu Mallamma of Bachannapet when he was one week old, that he acquired all rights over the properties of his adoptive parents and consequently relinquished all rights in the property of natural parents. It is alleged that the respondent had no title to any part of the property belonging to his natural parents and that he falsely executed a registered gift settlement deed also in favour of his son on 11-08-2011.

6. Counter affidavit was filed by the respondent opposing I.A.No.290 of 2013. It was denied that the respondent had no right in the properties of his natural parents since he went in adoption during his childhood. Certain allegations that the petitioners have misrepresented facts are also made.

7. By order dt.04-11-2015, I.A.No.290 of 2015 was dismissed by the Court below. It held that issues have been framed in the suit but trial is yet to commence

and application under Order 39 Rule 1 and 2 CPC is also not decided and that at that stage, this application to reject the plaint has been filed. While accepting that a plaint can be rejected if the averments in the plaint have not disclosed the cause of action, the Court below held that mixed questions of fact of law are pleaded for rejection of the plaint and the same cannot be entertained. It also held that there are no grounds to reject the plaint and that petitioners are at liberty to urge the grounds after participating in the trial.

8. Challenging the same, this Revision Petition is filed.

9. Learned counsel for the petitioners contended that the Court below has dismissed the application for rejection of plaint on the ground that it is filed at a belated stage and that the provision of law under Order 7 Rule 11 itself permits application for rejection of plaint to be filed at any stage. While this principle cannot be disputed, a reading of the order passed by the Court below nowhere indicates that the application was dismissed on the ground that it was filed at a belated stage.

10. Although the learned counsel for the petitioners further contended that the petitioners/defendants had disputed the title of the respondent to the property and the son of the respondent

himself is not supporting the respondent and sought for rejection of the plaint on that ground, I am of the opinion that such a contention cannot be gone into while considering an application for rejection of plaint.

11. In **Saleem Bhai and others Vs. State of Maharashtra and others**^[1], the Supreme Court has held that the relevant facts which need to be looked into for deciding an application under Order 7 Rule 11 CPC are the averments in the plaint only, that they alone or germane and the pleas taken by the defendants in the Writ Statement would be wholly irrelevant at this stage.

12. Having regard to this legal position, I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court in exercise of its power under Article 227 of the Constitution of India.

13. Therefore, the Civil Revision Petition is dismissed. The Court below is however directed to dispose of the suit as expeditiously as possible preferably within six months from the date of receipt of a copy of this order. Learned counsel for the petitioner assures that the petitioner will cooperate with the early disposal of the suit. No costs.

14. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 29-01-2016

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[\[1\]](#) AIR 2003 S.C. 759