

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

CIVIL REVISION PETITION No.4167 of 2015

Between:

M/s. Anand Paraboiled Rice Mill (P) Limited

.....Petitioner

and

G. Yadaiah and two others

.....Respondents

-

Date of Judgment pronounced on : 02-08-2016

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**

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! Counsel for the petitioner : Sri P. Venugopal

^ Counsel for the respondents : Sri G. Madhusudan Reddy

? Cases referred

[1] (1977) 4 SCC 467

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.4167 of 2015

ORDER:

The revision petitioner is the 3rd defendant in O.S.No.208 of 2012. The suit was filed for cancellation of the registered sale deed bearing No.3995/1990 dated 30.04.1990. The plaint filed is in April 2012 nearly, if not beyond at least nearly 12 years from the date of the registered sale deed.

2. As per Order IV CPC, every suit shall be instituted by presenting the plaint which shall comply with the rules contained in Orders VI & VII CPC as far as they are applicable. Order VI CPC deals with pleadings generally and to say equally for plaint and written statement or additional pleadings as the case may be and Order VII CPC specifically deals with plaint. Order VII Rule 1 CPC speaks what particulars the plaint shall contain as to name of Court, name, description and place of residence of plaintiff and respective defendants as far as can be ascertained and in case of minor or person of unsound mind, a statement to that effect and facts constituting the cause of action and when it arose, facts showing jurisdiction of Court, relief which the plaintiff claims with set off or counter claim or relinquishment as the case may be. So as per Order VII Rule 1 clause (e) CPC the plaint shall mention the cause of action when it arose. There is nothing to say for cause of action a separate Para has to be couched by showing all cause of action therein, but for in practice for sake of convenience with no need to read plaint as a

whole at every time to consider existence of cause of action or not. The law is fairly settled that a reading of the plaint as a whole, it has to ascertain whether it subsists with cause of action or not. The cause of action is bundle of essential facts and even a part of cause of action from reading of Section 20 CPC confers jurisdiction as to where it arisen even in part.

3. Now coming to the facts, the plaint at internal page 4 at Para 4 contains cause of action Para specifically saying it was arisen on 27.03.2012 when the 3rd defendant, who is the revision petitioner, has tried to interfere with plaintiff's possession and enjoyment over suit property and when plaintiff came to know about the said registered sale deed, sought for cancellation in saying the cause of action is subsisting from date of said knowledge. It is the submission of the learned counsel for the revision petitioner that a false cause of action is set up from a clear drafting by created illusion of the cause of action, and as such it is duty of the Court to nip it in the bud at least at the first hearing by examining the parties searchingly under Order X CPC. In fact, a petition under Order VII Rule CPC in I.A.No.34 of 2015 was filed by the

3rd defendant to reject the plaint on the grounds of the suit claim is barred by limitation and earlier there were revenue proceedings in respect of the property covered by sale deed made reference to the knowledge of the plaintiff herein and the suit not filed within three years therefrom as per Article 58 of the Limitation Act and the cause of action set out as if he came to know only on 27.03.2012 is nothing but a false plea and it is nothing by fraud on court in maintaining the suit as a vexatious litigation with speculative claim taking valuable time of the Court to run the lis and of opposite parties to face the trial.

4. In fact the law is fairly settled in saying to decide *prima facie* whether the Court has jurisdiction and plaintiff has cause of action to the suit and plaint whether barred by time or not for entertaining or

rejecting, the criteria is only based on the plaint averments from reading as a whole and not by considering probable defence of the defendants. It is because of the Order VII Rule 11 CPC speaks from the six clauses among which clause (a) in relation to cause of action and (d) in relation to barred by any law for other provisions are not relevant herein; and so far as bar of suit claim by limitation concerned, the plaintiff avers that the suit is within 3 years from date of his knowledge about the sale deed. Once such is the case, the Court cannot automatically reject the plaint under Order VII Rule 11 CPC not invite probable defence of defendants to decide therefrom but for leaving any remedy to the defendants if at all to file written statement and submit in the defence by showing any such disentitlement of the plaintiff to continue the suit proceedings. For that, Order XIV CPC contemplates settlement of issues from the pleadings of both parties after hearing and the first hearing commences from the settlement of issues for what is first hearing defined by Rule 2 Sub Rule 9 of the A.P. Civil Rules of Practice and Circular Orders, 1990, which says first hearing includes hearing of suit for settlement of issues and any adjournment thereafter. In the Order XIV CPC itself there is a provision seeking to settle the issues on question of fact and law and requirement if at all to seek for deciding as a preliminary issue either bar of limitation and/or lack of cause of action for the Court, when need of deciding on merits of the matter if necessary by conducting an enquiry/trial. The learned counsel for the revision petitioner placed reliance on the expression of the Apex Court in **T. Arivandandam Vs.**

T.V. Satyapal and Another^[1], where it was observed in Para 5 reads as follows:

“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 plaints. The learned Munsif must remember that if on a meaningful-not formal-reading of the plaint it is

manifestly vexatious, and meritless, 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 clear 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 court should insist imperatively on examining the party at the first bearing so that bogus litigation can be shot down at the earliest stage. The Penal Code (Ch. XI) is also resourceful enough to meet such men, 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."

5. Here it is necessary to mention the scope of Order X CPC which speaks particularly from the scope of Order 5 Rule 5 CPC of giving summons to the defendants to file written statement by defence to settle issues or even for final disposal and therefrom what Order X CPC speaks is to ascertain at the first hearing on his appearance in person or through pleader as to whether he admits or denies the allegations in the plaint or written statement and record any such admission or denial and opt for or to direct by Court from possibility on terms of settlement for any of the modes of Alternative Disputes Resolution Mechanism envisaged by Section 89 CPC and the examination of the parties at the first hearing shall be reduced to writing and its value thereof if at all to use later. The expression in T. Arivandandam Supra at Para 5 reproduced supra speaks no doubt the duty of the Court, whether any clever drafting created illusion of the cause of action and whether the pleadings from reading show gross abuse of the process in resorting to maintain the lis and in such a case, the Court has to nip it in the bud at the first hearing itself by examining the parties searchingly under Order X CPC in saying duty of an activist Judge is in that way the answer to any irresponsible law suits in that way. Thereby, it is premature to express any opinion in this regard from the law laid down on the scope of Order X CPC that has to be adopted by the trial Court to apply in the case on hand. Needless to

say if that stage crossed even, there is no bar for deciding as a preliminary issue.

Subject to the above observations, the revision petition is disposed of for nothing to interfere by sitting against the order of the lower Court from reading of the plaint averments to say either as lacking cause of action or as barred by limitation much less reject the plaint, but for giving liberty to take any recourse of Order X CPC or Order XIV CPC, if any, as the case may be.

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

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 02.08.2016

Note: L.R. Copy to be marked

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[\[1\]](#) (1977) 4 SCC 467