

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

CIVIL REVISION PETITION No. 5064 OF 2016

DATED 21ST OCTOBER, 2016

Between:

Srinivasa Co-operative Building Society,
Regd. No. 1710, D.No. 55-15-3/3,
Sai Sri Vihar, FF-1, H.B. Colony,
Visakhapatnam – 530013,
Rep. by its Secretary Sri R.G.Appa Rao,
S/o not known, Hindu, 51 years,
R/o Sai Sri Vihar, FF-1, H.B. Colony,
Visakhapatnam – 530013.

... Petitioner

AND

Ankitham Venkat Addep Bhanoji Row and another ...

Respondents

Counsel for the petitioner : Sri M.Anish Kamal

Counsel for the respondents : --

THE COURT MADE THE FOLLOWING

ORDER:

This civil revision petition arises out of order dated 23-06-2016 in I.A.No. 1341 of 2015 in O.S.No. 401 of 2015 on the file of the Court of II Additional District Judge, Visakhapatnam (for short, 'the lower Court').

2. I have heard Sri M.S.Prasad, learned senior counsel for the petitioner, and perused the record.

3. Respondent No. 1 filed the aforementioned suit for declaration of title, permanent injunction and also for mandatory injunction pertaining to sheds and compound wall allegedly erected by the petitioner. The petitioner has filed the aforementioned I.A. under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), for rejection of plaint on the ground that it does not disclose the cause of action. After hearing both sides, the lower Court has dismissed the I.A. Feeling aggrieved thereby, the petitioner filed this civil revision petition.

4. In para No. IV of the plaint, respondent No. 1-plaintiff averred as under:

"The cause of action for the suit arose when the plaintiff ancestors one Smt. Ankitham Achayamma, W/o M.R.Ry.A.V.Narasingha Row Garu purchased the property through Sri Vijavarapu Surayanarayanamma through a Regd. Sale Deed bearing document No. 209/1888 dated 19-04-1888; and when the plaintiff become absolute owner of a site an extent of Ac. 10.32 cents, which is situated at Sivaji Palem, Waltair Ward, Visakhapatnam, within the limits of GVMC, in Block No. 4 in T.S.No. 47, bearing Municipal Assessment No. 864, out of which Sq. 3,000 yds. Or 2,508 Sq. mts is part and parcel of the said total extent, for which the Town Survey number was sub-divided later as T.S.No. 47/20; and when the T.S.No. 47/1, 2 and 3 was sub-divided into 54 sub-divisions. The plaint schedule property i.e. 3,000 Sq. yds. Was shown in S.No. 47/20. The 10 Acres of land in S.No. 47 fell to the share of late Smt. Atchayamma Garu by way of Partition and Family Settlement Deed Registered as Doc. No. 784/154 dated 13-04-1954 made among (1) Ankitham Venkata Bhanoji Row Garu (2) A.V.N.Jagga Row Garu and (3) Smt. Ankitham Rama Devi W/o. Ankitham Venkata Bhanoji

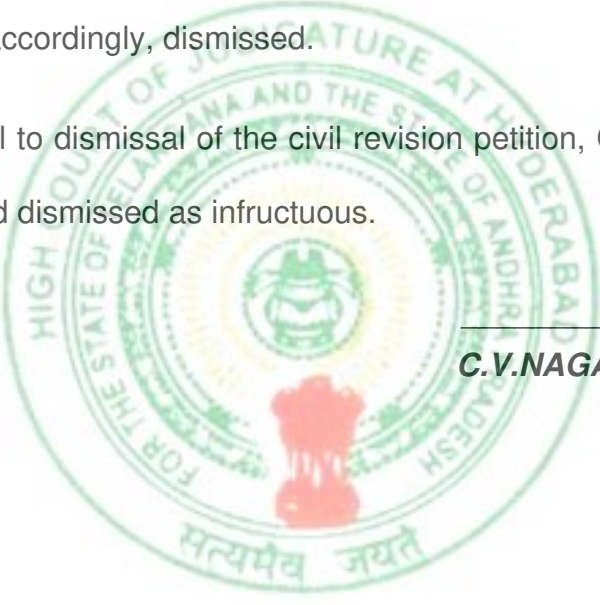
Row. Sri A.V.N.Jagga Row is the son of the Ankitham Venkata Bhanoji Row and Smt. Ankitham Rama Devi is the wife of Sri Ankitham Venkata Bhanoji Row and the suit schedule property devolved to the plaintiff from his ancestors i.e. from A.V.N.Jagga Row to the Plaintiff herein and his brother A.V.Monish S. Row Garu; and when since then the plaintiff and his brother is in peaceful possession and enjoyment of the suit schedule property, without any kind of interruption by any 3rd parties; and when in respect of the suit schedule property the plaintiff's G.P.A. Holder was looking after all the affairs in respect of the suit schedule property; and when subsequently on 28-08-2014 the plaintiff, his mother and his brother has executed a Development Agreement in favour of the said G.P.A. Holder Mallarapu Soma Sekhar S/o. Late Rama Rao to develop the suit schedule property; and when one Mr. Koneru Rama Krishna Rao and another i.e. the defendants forcibly encroached into the suit schedule property and erected sheds in the suit schedule property by evicting the plaintiff's workmen and further they are parking the vehicles of the Travels and also using the suit schedule property for Gas loading and unloading point, illegally without any manner of right or title. When his G.P.A. Holder questioned the high handed acts of the defendants they threatened him with dire consequences; and when the plaintiff filed C.O.P. against the defendants; and when the defendants forcible entered on 10-03-2015; and when they are making constructions and boundaries are all at Shivajipalem, Visakhapatnam within jurisdiction of this Honourable court."

5. Learned senior counsel for the petitioner strenuously submitted that every averment made by respondent No. 1 in the afore extracted part of the plaint is false and unsupported by any material and that on the contrary, the suit schedule property originally belonged to Koneru Rama Krishna Rao-respondent No. 2 and that as the same was declared as surplus, it was surrendered to the Government which has allotted the same to the petitioner.

6. It is trite law that in an application filed under Order VII Rule 11 of C.P.C. for rejection of plaint for non-disclosure of cause of action, the Court will not look into any material other than the averments in the plaint itself. It is not permissible for the Court either to inquire into the correctness or otherwise of the averments

or to consider whether they are supported by any documentary evidence. Only when the averments in the plaint taken on their face value do not disclose any cause of action that, the Court rejects the plaint exercising its power under Order VII Rule 11 of C.P.C. The cause of action part of the plaint, as reproduced above, would reveal that many facts, which constitute cause of action, have been pleaded by respondent No. 1. Therefore, as rightly pointed out by the lower Court, there is no merit in the plea of the petitioner that the plaint does not disclose cause of action. The lower Court has, therefore, rightly declined to reject the plaint. So much so, I do not find any merit in the civil revision petition and the same is, accordingly, dismissed.

7. As a sequel to dismissal of the civil revision petition, C.R.P.M.P.No. 6561 of 2016 shall stand dismissed as infructuous.



C.V.NAGARJUNA REDDY, J.

Date: 21-10-2016.

JSK