

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI
CIVIL REVISION PETITION No.3541 OF 2015

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ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India by the unsuccessful 5th defendant is directed against the order dated 07.04.2015 of the learned Additional Judge-cum-VI Senior Civil Judge, City Small Causes Court, Hyderabad passed in I.A. No.181 of 2014 in O.S. No.734 of 2008 filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short, 'the Code') requesting to reject the plaint on the ground that the plaint does not disclose the cause of action.

2. I have heard the submissions of learned counsel for the revision petitioner-5th defendant (for brevity, '5th defendant') and the learned counsel for the 1st respondent-plaintiff (for brevity, 'plaintiff'). The other respondents-defendants are stated to be not necessary parties.

3. I have perused the material on record. The facts which are necessary to be stated as a prelude to this order, in brief, are as follows:

The plaintiff had brought the suit against the sole defendant (since died) for specific performance of an agreement of sale dated 25.05.2005 executed by the defendant in favour of the plaintiff in respect of property bearing no.21-3-560 admeasuring 83 Sq. yards, situated at Panchi Burraq, Chelapura, Hyderabad more fully described in the schedule annexed to the plaint and for vacant possession of the same or alternatively for refund of the advance amount of Rs.3,00,000/- with interest and for costs. The sole defendant filed written statement resisting the suit. On the death of the sole defendant, the plaintiff filed an application for bringing on record the defendants 2 to 7 they being the legal representatives of the deceased sole defendant. The said application was allowed by the trial Court. It appears that the impleaded defendants had adopted the defence already taken by the sole defendant. In the pending suit, the 5th defendant had filed the aforementioned Interlocutory Application for rejection of the plaint on the

ground that the plaint does not disclose a cause of action.

4. The case of the 5th defendant, in support of the said request, in brief, is this:

The 5th defendant is one of the legal representatives of the deceased sole defendant, who died on 24.0.3.2013. On the death of the sole defendant, the suit has become infructuous. The deceased defendant pleaded in his defence that the suit agreement of sale is forged and fabricated and that it was brought into existence by the plaintiff and her husband for the purpose of grabbing the suit schedule property, which is the only property of the defendants. The defendants 2 to 7, who are the legal representatives of the sole defendant, are neither necessary nor proper parties to the suit. The alleged agreement of sale is not a valid contract and does not satisfy any conditions laid down in Section 10 of the Indian Contract Act, 1872 (for short, 'the Act of 1872'). None of the legal representatives of Atchaiah i.e., the defendants 2 to 7 are not parties to the suit agreement of sale. Notice was issued to Atchaiah, the sole defendant, and the suit, initially, was instituted against him only. The suit agreement of sale is not a concluded contract. In the plaint, it has been categorically mentioned that the sole defendant had acquired interest in the suit schedule property by virtue of the Release Deed dated 18.10.1993. The said document discloses that the deceased defendant was a member of a Joint Hindu Family and the suit schedule property is ancestral property and that he had succeeded to the suit schedule property as a coparcener/co-sharer. Since the suit schedule property is an ancestral property, the deceased defendant is incompetent to enter into any contract of sale in respect of the suit schedule property without the consent of other coparceners/co-sharers. The plaintiff had failed to establish an enforceable claim against the defendants 2 to 7. The basic and essential facts which constitute a cause of action are not mentioned in the plaint. Whether the plaintiff made any demand in support of her alleged right is doubtful as the said fact is not pleaded in the plaint. Demand of right and denial of said right, whether express or implied, is *sine-qua-non* for constituting a cause of action. The plaint has to be rejected when the plaint

does not disclose the cause of action. In the absence of lawful consideration and lawful object, the contract is liable to be declared as void and unenforceable. The jurisdiction to order specific performance of a contract arises only when a valid and enforceable contract exists between the parties. Since the schedule property is an ancestral property and as there are other coparceners having equal rights in the property, one coparcener cannot alienate the property without the consent or assent of the other coparceners, as per settled legal position. Therefore, the deceased defendant has no capacity to transact and enter into any agreement of sale and, therefore, even assuming that the alleged agreement of sale is true, the same is unenforceable. The suit claim is barred by limitation. Hence, the plaint is liable to be rejected.

5. The case of the plaintiff, as stated in his counter-affidavit, in brief, is as follows:

The sole defendant in his defence had categorically admitted the execution of the suit agreement of sale and did not deny his signatures on the said document; on account of increase in prices of immovable property, he had only twisted the matter by taking a different defence to avoid the performance of his part of contract. The sole defendant tried to avoid the contract; however, on his death, his legal representatives including the 5th defendant are added as defendants 2 to 7 to the suit. The 5th defendant is one of the owners as the suit schedule property devolved upon him being the legal heir of the deceased defendant. The provisions of the Indian Contract Act of 1872 and those of the Code relied upon by the 5th defendant are not applicable to the facts of the present case. The sole defendant was the absolute owner of the suit schedule property. Therefore, the defendants were not required to join as parties to the agreement of sale. The contentions raised by the 5th defendant are to be decided in the suit; and, no findings of summary nature can be recorded in an Interlocutory Application filed for rejection of the plaint. The Interlocutory Application is intended to drag on the proceedings. The present petition is without any basis and is liable to be

dismissed. The defendants 2 to 7 have taken the same defence, which the deceased defendant had taken in the suit. Issues are settled and the suit is posted for trial. Hence, the petition may be dismissed.

6. At the time of enquiry, no oral and documentary evidence was adduced before the trial Court. On merits, by the impugned order, the trial Court dismissed the application. Therefore, the 5th defendant had filed this Revision.

7. The learned counsel for the 5th defendant while reiterating the case of the 5th defendant, which is extracted *supra*, would contend as follows:

The suit agreement of sale is not true and valid and is un-enforceable. The suit document does not satisfy the requirements stated in Section 10 of the Act of 1872. The suit agreement of sale is not supported by consideration and is inadmissible in evidence. As per plaint averments, the suit agreement of sale is executed by the deceased defendant alone and the defendants 2 to 7, who are his legal representatives, are not parties to the suit agreement of sale. The said agreement is not enforceable against the defendants 2 to 7. Even according to the plaint averments, the agreement schedule property is an ancestral property and it is stated in the plaint that the deceased defendant acquired title and interest in the property by virtue of the Release Deed dated 18.10.1993. He was a member of Joint Hindu Family. Therefore, it is clear from the Release Deed and the plaint averments that the deceased defendant was a member of a Hindu Joint Family and that the suit schedule property is an ancestral property. Therefore, he is incompetent to alienate the property under the suit agreement of sale without the consent of other coparceners/co-sharers. The deceased defendant has no capacity to deal with the property and even assuming that the suit agreement is true, it is unenforceable since it is invalid as the deceased defendant has no right to enter into the contract ignoring the shares of the co-sharers/coparceners. Section 19 of the Specific Relief Act, 1963 (for short, 'the Act of 1963') supports the contentions of the defendants 2 to 7. The suit agreement of sale cannot be enforced against the defendants 2 to 7. They being the

coparceners or co-sharers, they have an independent right over the suit schedule property. The plaintiff, therefore, ought to have impleaded the defendants 2 to 7 at the time of instituting the suit. The court below was in error in holding that this defendant is claiming right over the suit schedule property as a legal heir of the deceased sole defendant. The trial Court had failed to follow the legal position applicable to the facts of the case.

8. On the contrary, the learned counsel for the plaintiff, while reiterating the defence of the plaintiff in the Interlocutory Application and while supporting the order of the Court below, would contend that the Court below had appreciated the facts correctly and the legal position obtaining in proper perspective by adverting the decisions stated before it on behalf of the 5th defendant and that, in any view of the matter, defendants 2 to 7 being the legal representatives of the deceased defendant are under facts and in law necessary parties to the suit on the death of deceased sole defendant and that, as rightly held by the Court below, all the contentions raised by the 5th defendant have to be decided, if at all they fall for consideration, at the time of final adjudication of the suit after full-fledged trial; the said contentions cannot be permitted to be canvassed in an application filed under Order VII Rule 11 of the Code; at the time of consideration of the application filed under Order VII Rule 11, the Court has to take into consideration the averments in the plaint only and that the pleas taken in the defence are wholly irrelevant; hence, the order of the trial Court, which is a well reasoned order, is sustainable under facts and in law and warrants no interference.

9. I have bestowed my attention to the facts and submissions. I have gone through the decisions cited.

10. Before proceeding further, it is necessary to refer to the legal position. Reliance was placed by the learned counsel for the 1st defendant on the decision in ***Church of Christ Charitable Trust and Educational Charitable Society, Represented by its Chairman Vs. Ponniamman Educational Trust, Represented by its Chairperson***^[1] where in it was held as follows:

“While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the Plaintiff the right to relief against the Defendant. Every fact which is necessary for the Plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the Defendant since in the absence of such an act no cause of action can possibly accrue. It is mandatory that in order to get relief, the Plaintiff has to aver all material facts. In other words, it is necessary for the Plaintiff to aver and prove in order to succeed in the suit.”

In the above cited decision a reference was made to the judgment in **T. Arivandandam v. T.V. Satyapal and Anr.** (1977) 4 SCC 467, wherein while considering the very same provision, i.e., Order VII Rule 11 and the duty of the trial Court in considering such application, the Supreme Court has reminded the trial Judges with the following observation:

“The learned Munsif must remember that if on a meaningful - for 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 Order VII, Rule 11 Code of Civil Procedure taking care to see that the ground mentioned therein is fulfilled. And if clever 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, Code of Civil Procedure. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr.XI) and must be triggered against them....

From the ratio in the decision it is clear that if the allegations are vexatious and meritless and not disclosing a clear right or material(s) to sue, it is the duty of the trial Judge to exercise his power under Order VII Rule 11. If clever drafting has created the illusion of a cause of action as observed in the above referred decision, it should be nipped in the bud at the first hearing by examining the parties under Order X of the Code.

In **United Insurance Co. v. C. R. Ramanatham**,^[2] in paragraph 10 it is observed as under:

Under Order VII Rule 11 (d) a plaint must be rejected only if the averments therein explicitly disclose that the suit was barred by the provisions of any law, but not otherwise. The Court had no power to throw out the suit by rejecting the plaint at the threshold stage by examining and interpreting the provisions of law on which the suit is found. Neither the express language of clause (d) of Rule 11 nor its intendment clothes the Court with such a power. The words “where the suit appears to be barred by any law” are qualified by “the statement in the plaint”. What is explicitly mentioned in the plaint, therefore, must alone be the basis for the exercise of power under Order VII Rule 11 (d), but not the conclusions that may be interpretatively drawn on an examination of the statutory provisions alluded to in the plaint. Where there was no such explicit statement in the plaint the question whether there was any legal barricade to the suit must be tried as an issue at the appropriate stage and that by

this procedure alone the interests of both the parties to the suit could be safeguarded.”

In **Bhau Ram vs. Janak Singh and others**^[3], it is held by the Supreme Court as under:

“The law has been settled by this Court in various decisions that while considering an application under Order VII Rule 11 Code of Civil Procedure, the Court has to examine the averments in the plaint and the pleas taken by the Defendants in its written statements would be irrelevant. [vide C. Natrajan v. Ashim Bai and Anr. (2007) 14 SCC 183, Ram Prakash Gupta v. Rajiv Kumar Gupta and Ors. (2007) 10 SCC 59, Hardesh Ores (P) Ltd. v. Hede and Co. (2007) 5 SCC 614, Mayar (H.K.) Ltd. and Ors. v. Owners & Parties, Vessel M.V. Fortune Express and Ors. (2006) 3 SCC 100, Sopan Sukhdeo Sable and Ors. v. Assistant Charity Commissioner and Ors. (2004) 3 SCC 137, Saleem Bhai and Ors. v. State of Maharashtra and Ors. (2003) 1 SCC 557]. The above view has been once again reiterated in the recent decision of this Court in The Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman v. M/s Ponniyamman Educational Trust represented by its Chairperson/Managing Trustee, JT 2012 (6) SC 149.”

In **A.B.C. Laminart Pvt. Ltd. and Anr. v. A.P. Agencies, Salem** (1989) 2 SCC 163, this Court explained the meaning of "cause of action" as follows:

A cause of action means every fact, which if traversed, it would be necessary for the Plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the Plaintiff a right to relief against the Defendant. It must include some act done by the Defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the Plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the Defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the Defendant nor does it depend upon the character of the relief prayed for by the Plaintiff.

11. Keeping in view the settled and undisputed legal principles, I have carefully gone through the plaint to examine as to whether the plaint discloses a cause of action on a careful and meaningful reading and whether the suit appears from the statement in the plaint to be barred by any law. The suit is filed for specific performance of an agreement of sale dated 25.05.2005 and alternately for refund of the advance amount and for costs. Before the suit a notice dated 05.05.2008 was issued and reply was received. The suit was instituted against the sole defendant (since died) on 16.05.2008 averring in the plaint that the cause of action is continuing since then. On a careful and meaningful reading of the plaint, it does not appear from the statement in the plaint that the suit is barred by any law.

12. Coming to the existence of cause of action or lack of it, it is necessary to note that in the plaint, the averments to the following effect are made: 'The sole defendant is the absolute owner and possessor of the suit schedule property and that when the defendant offered to sell the plaintiff had accepted and agreed to purchase and that the suit agreement of sale was reduced into writing, after the terms and conditions were settled, and that the advance consideration of Rs.3,00,000/- out of the total agreed consideration of Rs.4,00,000/- was paid and received and that the title deeds were handed over as the substantial portion of the sale consideration was paid and that the balance was agreed to be paid on or before 16.01.2006 and that the defendant had agreed to execute a regular sale deed in favour of the plaintiff after receiving the balance amount.' The further averments in regard to the continuous readiness and willingness on the part of the plaintiff and the defendant prolonging the matter on the ground that he is in search of an alternate accommodation so as to hand over possession of the suit to the plaintiff are also pleaded in the plaint. Further, it is also averred in the plaint that the plaintiff had given enough time to the plaintiff to vacate the premises and to execute the sale deed. The averments about exchange of notices etcetera are all pleaded in the plaint. Thus a plain, careful and meaningful reading of the plaint discloses that the cause of action is explicitly pleaded in the plaint and that all the averments, as required under facts and in law, are sufficiently urged in the plaint and that the plaint clearly discloses a right to sue, as required under facts and in law. Therefore, the decisions cited are helpful to the plaintiff and do not advance the case of the 1st defendant any further.

13. Be it noted that the defendant 2 to 7 were brought on record on the death of the sole defendant, they being admittedly his legal heirs/legal representatives. The learned counsel for the 5th defendant having read the contents of the plaint and also the release deed where under the mother and the brothers of the sole defendant had released their respective shares in favour of the sole defendant, would contend that the recitals in the said deed disclose that the property is an ancestral property and that the defendants 2 to

7 who are the children of the deceased sole defendant being coparceners are having shares in the coparcenary property and that therefore, the sale agreement executed by the sole defendant without the consent of the defendants 2 to 7 is not valid and binding upon the said defendants and that the said defendants are having rights independently and that since they did not join in the execution of the suit agreement of sale they cannot be impleaded in a suit for specific performance and that their impleadment enlarges the scope of the *lis*. Having so urged he had placed reliance on a three-Judge Bench decision of this Court in ***Kasturi Vs. Iyyamperumal and others***^[4] and had submitted that in this cited case it has been held that in a suit for specific performance of a contract for sale of property a stranger or a third party to the contract cannot be added as a defendant in the suit. In my opinion, the aforesaid decision is clearly distinguishable as the aforesaid decision was rendered obviously while considering an application by a stranger/3rd party filed for impleadment to the suit. Hence, the aforesaid decision will have no application to the facts of the case. Further, the decision in ***Rohit Chauchan Vs. Surinder Singh and others***^[5] was also relied upon in support of the following propositions:

In our opinion coparcenary property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor. Coparcenary is a narrower body than the Joint Hindu family and before commencement of Hindu Succession (Amendment) Act, 2005, only male members of the family used to acquire by birth an interest in the coparcenary property. A coparcener has no definite share in the coparcenary property but he has an undivided interest in it and one has to bear in mind that it enlarges by deaths and diminishes by births in the family. It is not static. We are further of the opinion that so long, on partition an ancestral property remains in the hand of a single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property but if a son is subsequently born, the alienation made before the birth cannot be questioned. But, the moment a son is born, the property becomes a coparcenary property and the son would acquire interest in that and become a coparcener.

In the present case, the defendants 2 to 7 are the legal representatives of the deceased sole defendant; and, as per plaint averments the suit schedule property is the absolute property of the sole deceased defendant. At this stage while dealing with an application filed for rejection of plaint on the ground that the plaint does not disclose a cause of action, the court cannot take into consideration the defence or the probable defence and need not

examine the merits or demerits of the defence. The law has been well settled by the Supreme Court in various decisions that while considering an application under Order VII Rule 11 Code of Civil Procedure, the Court has to examine the averments in the plaint and that the pleas taken by the defendants in its written statements or in the application for rejection of the plaint would be irrelevant. Therefore, the contentions urged on behalf of the 5th defendant are untenable and cannot be countenanced at this stage. The said contentions are accordingly rejected.

14. Keeping in view the precedential guidance in the decisions referred to supra, when the plaint is read carefully, harmoniously and in a meaningful manner, it discloses explicitly the right to sue, the right to prosecute the suit against the defendants 2 to 7 and also the cause of action. It is manifest from the plaint that the plaint averments also include all the material facts on which the right to sue and the cause of action are founded.

15. Having regard to the facts, the reasons aforesaid and the precedential guidance, it must be held that the grounds urged by the 5th defendant in the petition filed seeking rejection of the plaint are devoid of merit and hence, the same cannot be countenanced at this pre-trial stage.

16. Accordingly, this civil revision petition is dismissed. It is needless to state that if the Court below has not already given an opportunity to the 5th defendant to file a written statement, the Court below shall now give an opportunity to the 5th defendant to file a written statement with all the available pleas, which the law permits, and then proceed with the further steps in the suit. If such an opportunity is already given, the trial Court shall proceed further in the matter in accordance with the procedure established by law.

No costs.

Miscellaneous petitions, if any, pending in this revision shall stand dismissed.

06th June, 2016
Dsh

M.SEETHARAMA MURTI, J

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI



CIVIL REVISION PETITION No.3541 OF 2015

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Date. 06-06-2016

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[\[1\]](#) 2012 (8) SCC 706

[\[2\]](#) 1989 (1) ALT 190

[\[3\]](#) AIR 2012 SC 3023

[\[4\]](#) 2005 (6) SCC 733

[\[5\]](#) 2013 (9) SCC 419