

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.494 of 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the order dated 10.12.2015 passed in I.A.No.207 of 2015 in O.S.No.693 of 2014 by the III Junior Civil Judge, City Civil Court, Hyderabad, whereunder, the petition filed by the petitioner herein under Order VII Rule 11 (a) of the Code of Civil Procedure, 1908 ('the Code', for brevity) for rejection of plaint for want of cause of action against defendants 1 and 2 was dismissed by the Court below.

2. The respondent No.1 herein/plaintiff filed the suit against respondents 2 and 3 herein for grant of perpetual injunction restraining them from interfering with his peaceful possession and enjoyment of the suit schedule property making serious allegations of attempt to interfere with the possession and enjoyment and causing damage to the property and taking away huge amount including books etc.. The petitioner came on record as per the order dated 06.04.2015 passed in I.A.No.334 of 2014 as 3rd defendant in the main suit and he filed a petition under Order VII Rule 11 (a) of the Code to reject the plaint on the ground that it does not disclose any cause of action, alleging that the 2nd respondent – Khwaja Kaleelullah S/o. Late Khwaja Amanullah, aged 65 years is a resident of New Delhi and the 3rd respondent – Mrs.Noor Jahan Begum died long ago, who are no other than the brother and mother of the revision petitioner and filing of suit against a dead person/3rd respondent is illegal and on this ground alone, the plaint is liable to be rejected and, therefore, the question

of interference with the possession and enjoyment of the plaintiff's property does not arise on any particular day as alleged in the plaint. On the other hand, the plaintiff lodged a private complaint before XVI Metropolitan Magistrate, Hyderabad, against the revision petitioner herein complaining commission of certain offences and, therefore, the cause of action pleaded in the plaint is not true and it does not disclose the real cause of action and prayed to reject the plaint.

3. The first respondent filed counter contending that due to illegal interference of defendants 1 and 2, he filed suit for perpetual injunction and the petitioner got himself impleaded as 3rd defendant to safeguard the 1st defendant who remained *ex parte*. The 1st defendant intentionally remained *ex parte* at the time of passing the interim injunction and that the plaint discloses cause of action and, therefore, there are no grounds to reject the plaint under Order VII Rule 11 (a) of the Code and prayed for dismissal of the petition.

4. Upon hearing both the counsel, the Court below dismissed the petition on the ground that the plaint discloses cause of action and it is not a ground to reject the plaint under Order VII Rule 11 (a) of the Code. Aggrieved by the same, the present revision petition is filed.

5. The learned counsel for the revision petitioner/3rd defendant raised several contentions mainly contending that the approach of the Court below is contrary to the principles laid down by the Apex

Court in ***T.Arivandandam Vs. T.V.Satyapal and another***¹ and ***I.T.C.Limited Vs. Debts Recovery Appellate Tribunal and others***² and, therefore, the order under challenge is liable to be set aside and to direct the Court below to reject the plaint.

6. On the other hand, the learned counsel for the respondents contended that at the stage of deciding the rejection of plaint under Order VII Rule 11 (a) of the Code, the Court has to read the entire plaint as a whole to find out whether it discloses cause of action or not and the truth or otherwise in the cause of action mentioned in the plaint cannot be decided at this stage and supported the order passed by the Court below relying on a judgment of this Court in ***Kasani Narasimhulu Vs. Sathagowni Srinivas Goud and two others***³ and a judgment of Madras High Court in ***R.Arumugam Vs. PR. Palanisamy and P.Gopalakrishnan***⁴ and prayed for dismissal of the revision.

7. Undisputedly, the 1st respondent filed suit against 2nd respondent who is the resident of New Delhi and 3rd respondent who died long back prior to filing of the suit. Therefore, the suit against a dead person is liable to be dismissed since there will not be any cause of action against her as the question of her interference with the peaceful possession and enjoyment of the property after her death does not arise. Therefore, the cause of action pleaded against 3rd respondent – a dead person, is false on the face of record. So far as 2nd respondent is concerned who is a

¹ AIR 1977 Supreme Court 2421(1)

² AIR 1998 Supreme Court 634

³ 2014 (2) ALD 149

⁴ Decided on 08.01.2013 in S.A.No.711 of 2009 and M.P.No.1 of 2009

resident of New Delhi and notice was sent to New Delhi to the address mentioned in the cause title of the plaint. Now, the question is whether there is any possibility of the 2nd respondent interfering with the possession and enjoyment of the property of the plaintiff, he being the resident of New Delhi on the date when he is alleged to have interfered. This question cannot be decided at this stage since it is a matter to be decided after full-fledged trial after adducing evidence by both parties. At the stage of deciding the revision preferred against an application under Order VII Rule 11 (a) of the Code, this Court can go into the details mentioned in the plaint to decide whether the plaint any discloses cause of action or not.

8. The truth or otherwise in the cause of action pleaded in the plaint cannot be decided at pre-trial stage, as held by this Court in **Kasani Narasimhulu's** case (3 supra) relied by the learned counsel for the respondents. At the same time, the Apex Court heavily laid on the trial Courts not to entertain such meritless suits in **T.Arivandandam's** case (1 supra) and held 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 facts found in the judgment of the High Court, it is perfectly plain that the suit is now pending before the First Munisif's Court Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munisif 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 O. 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 O. X. C.P.C. 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. (Ch. XI) and must be triggered against them. In this case, the learned Judge to his cost realized what George Bernard Shaw remarked on the assassination of Mahatma Gandhi – ‘It is dangerous to be too good’.”

9. In **I.T.C.Limited’s** case (2 supra), the Apex Court held as follows:-

“It is true, we are also dealing with a question whether the plaint disclosed a cause of action. But here the allegation in the plaint is only one relating to absence of movement of goods by the seller. Non-movement of goods by the seller could be due to a variety of tenable or untenable reasons, the seller may be in breach of the contract but that by itself does not permit a plaintiff to use the word ‘fraud’ in the plaint and get over any objections that may be raised by way of filing an application under Order VII Rule 11 CPC. Inasmuch as the mere allegation of drawal of monies without movement of goods does not amount to a cause of action based on ‘fraud’, the bank cannot take shelter under the words ‘fraud’ or ‘misrepresentation’ used in the plaint and therefore, there is no cause of action even from the plaint allegations, against the appellant and the appeal is allowed.”

10. If the principles laid down in **T.Arivandandam’s** case (1 supra) is applied to the facts the present case, it is not the appropriate stage to decide the truth or otherwise in the cause of action due to clever drafting of the plaint which created an illusion against the 3rd respondent herein, who is no more; and, insofar as

the 2nd respondent is concerned, the Court below has to decide the same at the stage of examination of parties under Order X of the Code.

11. Hence, by applying the principles laid down in the above decisions relied by the learned counsel for the revision petitioner, the Court below is directed to examine the parties to suit under Order X of the Code and decide whether the suit is vexatious and plaint discloses any cause of action and if not, pass appropriate orders in accordance with law.

12. With the above directions, the Civil Revision Petition is disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand dismissed.

14th September, 2016.
Bvv

M. SATYANARAYANA MURTHY, J

