

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.233 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the petitioner-defendant is directed against the order, dated 06.09.2016, of the learned II Additional Junior Civil Judge, Ranga Reddy District at L.B. Nagar, passed in IA.No.774 of 2016 in OS.No.466 of 2010.

1.1 By the said order, the afore-said petition filed by the petitioner-defendant under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('the Code', for short) for rejection of the plaint is dismissed.

2. I have heard the submissions of Sri B.M. Patro, learned counsel for the petitioner-defendant, and of Sri S. Surender Reddy, learned counsel for the respondent-plaintiff. I have perused the material record.

3. The respondent-plaintiff brought the suit against the revision petitioner-defendant for specific performance of a contract of sale, dated 12.11.1992. The defendant, who is resisting the suit, filed the afore-stated IA for rejection of the plaint. As per the pleadings of the defendant and the submissions made before this Court, the defendant is seeking rejection of the plaint on three grounds namely - (1) there is no cause of action for the plaintiff to bring the suit; (2) the suit is barred by law of limitation; and, (3) the defendant is the pattadar and possessor of the land in Sy.No.412/ ee of Korremulla village; but, not of the land in S.No.412, that is, the suit schedule property and that the suit sale agreement is forged, fabricated and was brought into existence for the purpose of the suit. The plaintiff filed a counter reiterating that the suit contract of sale is executed by the defendant as stated in the plaint and that the suit is filed well within the time allowed under law and is not barred by law of limitation and that in the plaint the cause of action is specifically pleaded

and that the plaint discloses cause of action and also the statement to the effect that the suit is within the time allowed under law.

4. In view of the contentions of the defendant, it is necessary to refer to the provision of Order VII Rule 11 of the Code of Civil Procedure, 1908, which reads as under:

11. Rejection of plaint.- The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails comply with the provision of Rule 9.

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.

5. Dealing first with the contention that there is no cause of action for the plaintiff to file the suit, it is to be noted that as per the provision of law the suit cannot be dismissed on the ground of absence of cause of action as while considering a request for rejection of the plaint the Court is required to see as to whether the plaint discloses the cause of action or not. Therefore, a plaint deserves to be rejected for non disclosure of a cause of action but not where there is no cause of action. Whether the cause of action pleaded in the plaint exists or not and whether such cause of action pleaded is true or not is a question of fact which has to be adjudicated after full fledged trial. It is well settled that to ascertain as to whether the plaint discloses the cause of action or not, the averments in the plaint are alone to be seen. A plain perusal of the

plaint reflects that the plaintiff specifically pleaded the facts constituting the cause of action and also mentioned the core contentions constituting the cause of action in paragraph 4 of the plaint and, therefore, it is evident from the plaint that the plaint discloses cause of action. Hence, the first contention of the defendant which is untenable is liable for rejection. The said contention is accordingly rejected.

6. Dealing with the next contention that the suit is barred by law of limitation, it is again to be noted that as per the provision of law, the Court has to take into consideration the contents of a plaint on their face value while determining the question of limitation at this stage. If only the Court finds that even according to the averments in the plaint the suit is barred by limitation then a plaint can be rejected. Once the plaint contains a statement saying that the suit is not barred by limitation and when it appears from the statement in the plaint that the suit is filed well within the time allowed under law, the plaint cannot be rejected on the ground that the suit claim is barred by law of limitation. In such an event, the said question of limitation being a mixed question of fact and law has to be adjudicated after full fledged trial. In the case on hand, the defendant's contention is that the suit contract of sale is of the year 1992 and, therefore, the suit ought to have been filed within three years from the said date and that the suit filed in the year 2010 is barred by law of limitation. However, in the plaint, the plaintiff specifically pleaded that in the month of December, 2008, when the plaintiff demanded the defendant to execute registered sale deed in his favour in respect of the suit property, the defendant refused to do so and that thereafter on 10.02.2009 the plaintiff has got issued a legal notice to the defendant and that the defendant failed to issue a reply and that on 27.02.2010 when the defendant contemplated to dispose of the land to third parties ignoring the suit contract of sale and thereby committed the breach of contract, the suit was brought

and, therefore, the suit is within time as the defendant refused to perform his part of contract in December, 2008. The above averments in the plaint, which alone are to be considered at this stage, when taken on their face value reflect that the suit is filed well within time allowed under law and hence, it follows that the statements in plaint disclose that the suit is not barred by law of limitation.

7. Dealing finally with the contention that the defendant is the owner of the land in Sy.No.412/ee and not the land in Sy.no.412, which is the suit schedule property, and that the suit contract of sale is forged, fabricated and was brought into existence for the purpose of the suit, it is apt to note that the said contentions cannot be countenanced in support of a request for rejection of the plaint in view of the provision of law, which is already extracted supra.

8. On the above analysis, this Court finds that none of the grounds urged by the defendant for rejection of the plaint are tenable and hence, the impugned order passed by the trial Court, which is justified, does not warrant any interference.

9. In the result, the Civil Revision Petition is dismissed with costs.

Miscellaneous petitions pending if any shall stand closed.

JUSTICE M. SEETHARAMA MURTI

28.08.2017
Vjl