

**THE HON'BLE SRI JUSTICE SANJAY KUMAR**

**CIVIL REVISION PETITION NO.2287 OF 2017**

**O R D E R**

This civil revision petition under Article 227 of the Constitution arises out of the order dated 09.03.2017 passed by the learned I Additional District Judge, Ranga Reddy District at L.B.Nagar, in I.A.No.743 of 2016 in O.S.No.809 of 2015. This I.A. was filed by the third defendant in the suit under Order 7 Rule 11(a) CPC praying for rejection of the plaint on the ground that there was no cause of action. By the order under revision, the trial Court dismissed the I.A. Aggrieved thereby, the third defendant is before this Court.

O.S.No.809 of 2015 was filed for a permanent injunction restraining the defendants from interfering with, or causing any disturbance to, the plaintiff's possession and enjoyment of the plaint schedule properties.

The case of the third defendant as set out in the affidavit filed in support of the subject I.A. was that for filing a suit for permanent injunction in respect of an immovable property, the plaintiff necessarily has to be in actual possession of the said property and demonstrate that there was a threat to his right of possession from the defendants. He further stated that the plaintiff had filed W.P.No.34575 of 2014 before this Court against the Government authorities and impleading him and his predecessors-in-title also, wherein he sought a direction for delivery of physical possession of the lands which were the subject matter thereof. According to the third defendant, those lands were the same as the suit schedule properties. He asserted that as the plaintiff admittedly had no possession over the suit schedule properties, going by his own prayer

in the writ petition, he could not maintain a suit for a permanent injunction and there was no cause of action. He also raised the plea that the suit was undervalued warranting rejection of the plaint for non-payment of proper Court-fees.

The trial Court however opined that the points raised by the third defendant could not be considered at that juncture as it would be premature and gave him liberty to re-agitate the aspects raised by him at the relevant point of time, if advised to do so. The trial Court further observed that an application under Order 7 Rule 11(a) CPC could only be examined on the strength of the plaint to ascertain as to whether it disclosed a cause of action and that it could not look into anything else.

Sri A.Venkatesh, learned counsel for the petitioner/third defendant, would contend that Courts of law should take judicial notice of facts under Section 57 of the Indian Evidence Act, 1872 (for brevity, 'the Act of 1872'). He would argue that the provision is not exhaustive of the facts which the Courts must take judicial notice of and assert that once the plaintiff went on record in W.P.No.34575 of 2014 that he had no possession over the suit schedule properties, the trial Court was under a duty to take notice of the same while considering the subject I.A. filed for rejection of the plaint.

*Per contra*, Sri Eranki Phani Kumar, learned counsel for the first respondent/plaintiff, would assert that it is well settled that the trial Court, while examining an application under Order 7 Rule 11(a) CPC, would only go by the plaint and the plaint documents to ascertain whether a cause of action is made out or not. He would contend that the trial Court rightly did not look into the material produced by the third defendant and rejected his plea.

Sri A.Venkatesh, learned counsel, placed reliance on **ONKAR NATH V/s. THE DELHI ADMINISTRATION**<sup>1</sup>, wherein the Supreme Court observed that the list of facts mentioned in Section 57 of the Act of 1872 is not exhaustive and the purpose of the Section is to see that the Court should take judicial notice of certain facts rather than exhaust the category of facts which the Court may, in appropriate cases, take judicial notice of. It was further observed that recognition of facts without formal proof is a matter of expediency and no one can question the need and wisdom of accepting the existence of matters which are unquestionably within public knowledge.

Significant to note, these observations were made in the context of judicial notice being taken of the fact that, when the appellants in that case delivered their speeches, a railway strike was imminent and such a strike was, in fact, launched thereafter. It was in this milieu that the Supreme Court observed that shutting the judicial eye to existence of facts which are unquestionably within public knowledge is, in a sense, an insult to commonsense and would tend to reduce judicial process to a meaningless and wasteful ritual.

Sri A.Venkatesh, learned counsel, would also place reliance on **T.ARIVANDANDAM V/s. T.V.SATYAPAL**<sup>2</sup>, wherein the Supreme Court observed 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, the Court must exercise its power under Order 7 Rule 11 CPC, taking care to see that the ground mentioned therein is fulfilled. The Supreme Court held that if by clever drafting, an illusion of a cause of action is created; it must be nipped in the bud at the first hearing by examining the party

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<sup>1</sup> (1977) 2 SCC 611

<sup>2</sup> (1977) 4 SCC 467

searchingly under Order 10 CPC. It was pointed out that an activist Judge would be the answer to irresponsible law suits and the trial Courts should insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest.

On the other hand, Sri Eranki Phani Kumar, learned counsel, would point out that the Supreme Court, in ***KULDEEP SINGH PATHANIA V/s. BIKRAM SINGH JARYAL***<sup>3</sup>, held that in so far as an enquiry under Order 7 Rule 11 (a) CPC is concerned, the Court can only see whether the plaint or rather the pleadings of the plaintiff constitute a cause of action and the Court must take a decision looking at only such pleadings and not based on the rebuttal made by the defendant or any other materials produced by the defendant.

As no arguments were advanced before this Court as to the alleged undervaluation of the suit, consideration is limited only to the contention of the third defendant that the suit was liable to be rejected on the ground that it disclosed no cause of action.

It is well settled that to ascertain whether there is a cause of action for the suit, only the plaint and the plaint documents are to be looked into. At such stage, the question of examining any material produced by the defendant does not arise. In the present case that is exactly what the third defendant wants. He seeks to rely upon the affidavit of the plaintiff filed in W.P.No.34575 of 2014 to assert that the plaintiff could not sue for a permanent injunction as he does not have possession of the suit schedule properties.

Though Sri A.Venkatesh, learned counsel, would contend that the trial Court is fully empowered, *nay* under a duty, to take judicial notice of the fact that the plaintiff had gone on record by way of the

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<sup>3</sup> (2017) 1 SCC 249

sworn affidavit filed in W.P.No.34575 of 2014 stating certain facts which completely negate the plaint averments, the fact remains that if the trial Court were to do so, it would be looking beyond the plaint and the plaint documents to ascertain whether there was a cause of action for the plaintiff to sue. Balancing these two legal propositions, the conclusion is inevitable that for examination of an application under Order 7 Rule 11(a) CPC, the trial Court ought not to go beyond the pleadings of the plaintiff at that stage even for the purpose of taking judicial notice of facts if they are brought in through the material produced by the defendant. As pointed out by the Supreme Court in **T.ARIVANDANDAM<sup>2</sup>**, the proper course would be for the trial Court to take up the issue at the stage of the first hearing under Order 10 Rule 1 CPC.

The trial Court therefore did not commit an error in dismissing the application filed by the third defendant under Order 7 Rule 11(a) CPC. The civil revision petition is therefore devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

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**SANJAY KUMAR, J**

**4<sup>th</sup> AUGUST, 2017**

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