

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE N.BALAYOGI

+ Appeal Suit No.491 of 2017

% 10-7-2017

Gokari Jagadeshwar, S/o late G.Mallaiah,
Aged about 55 years, Occ: Agriculture & Business,
R/o H.No.3-12, Kismathpur Village,
Rajendranagar Mandal, Ranga Reddy Dist.

... Petitioner/
Appellant/Plaintiff

Vs.

\$ 1. G.V. Arjun, S/o late G.Mallaiah,
Aged about 46 years, Occ: Agriculture & Business,
R/o H.No.3-12, Kismathpur Village,
Rajendranagar Mandal, Ranga Reddy Dist.

... Respondent/R-1/D-1

2. Gokari Sahadev, S/o late G.Mallaiah,
Aged about 44 years, Occ: Agriculture & Business,
R/o H.No.3-12, Kismathpur Village,
Rajendranagar Mandal, Ranga Reddy Dist.

... Petitioners/
R-2 to R-7/D-2 to D-7

! Counsel for the Appellant: Mr. E.Madan Mohan Rao

Counsel for Respondent No.1: Mr. S.Niranjana Reddy,
Senior Counsel

Counsel for Respondent No.3: Mr. K.Goverdhan Reddy

< Gist:

> Head Note:

? Cases referred:

1. 2017 (2) HLT 1 (D.B.)

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE N.BALAYOGI

Appeal Suit No.491 of 2017

Judgment: (per V.Ramasubramanian, J.)

By consent of parties the appeal itself was taken up for final disposal, as the dispute lies in a very narrow compass.

2. Heard Mr. E.Madan Mohan Rao, learned counsel for the appellant, Mr. S.Niranjan Reddy, learned Senior Counsel appearing for the 1st respondent and Mr. K.Goverdhan Reddy, learned counsel for the 3rd respondent.

3. The appellant herein filed a suit in O.S.No.1474 of 2013 for partition and separate possession of his 1/4th share in the suit schedule properties. In the suit, the 1st respondent herein, who was the 1st defendant, took out an application under Order VII, Rule 11 CPC on the ground that there was no cause of action and that the suit was barred by limitation.

4. The Court below allowed the application on both counts forcing the plaintiff to come up with the above appeal.

5. A perusal of the judgment of the Court below would show that the Court below had extensively considered all the documents filed on both sides and almost decided the suit, in an application under Order VII, Rule 11 CPC, with the only difference being that there was no trial. In other words, the judgment has been passed completely in disregard to the manner to which an application under Order VII, Rule 11 CPC has to be dealt with.

6. As we have pointed out earlier, the prayer for rejection of the plaint was made on two grounds, namely, that there was no cause of action and on the ground of limitation.

7. But the very fact that the parties were related to each other and the fact that the properties are allegedly inherited from the biological father, was good enough cause of action to maintain a partition suit.

8. Insofar as limitation is concerned, it is always a mixed question of fact and law. Therefore, a plaint for partition cannot be thrown out on the ground of limitation, as the question of ouster etc., are all to be decided only with reference to the facts pleaded and the evidence recorded.

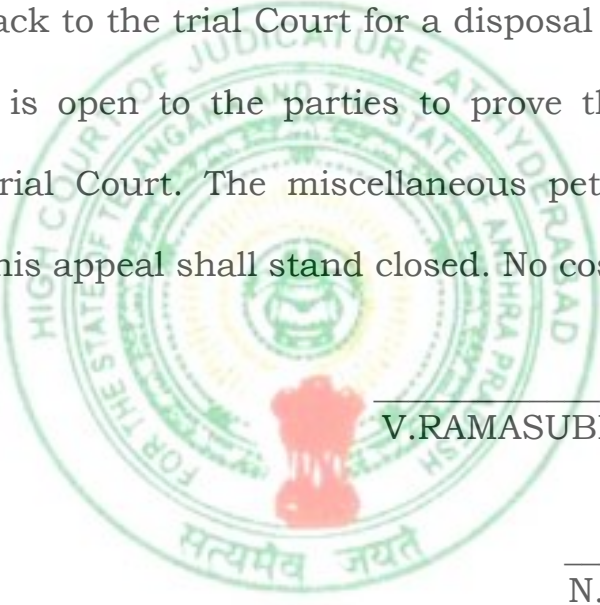
9. In a recent decision in *Mustigulla @ Namaswamy Hemanth Kumar v. M/s. Abhaya Infrastructures Private Limited*¹, a Division Bench of this Court, to which one of us (VRS, J.) was a party, had an occasion to consider in detail the parameters of which an application under Order VII, Rule 11 CPC could be allowed. The case on hand does not satisfy the parameters of Order VII, Rule 11 CPC.

10. The Court cannot see at the stage of considering an application under Order VII, Rule 11 CPC, as to whether the plaintiff has a strong case to succeed. The Court below cannot even look into the written statement or the documents filed by the defendants to decide an application under Order VII, Rule 11 CPC. A bare reading of the plaint and

¹ 2017 (2) HLT 1 (D.B.)

perhaps the plaint documents, should alone convince the Court to come to the conclusion whether the plaint should be rejected at the threshold or not.

11. But the trial Court in this case has gone beyond the scope of Order VII, Rule 11 CPC, considered the documents filed by the defendants and allowed the application. Hence, the judgment and decree of the trial Court cannot be sustained. Therefore, the appeal is allowed and the judgment and decree of the trial Court are set aside. The suit is remanded back to the trial Court for a disposal in accordance with law. It is open to the parties to prove their pleadings before the trial Court. The miscellaneous petitions, if any, pending in this appeal shall stand closed. No costs.



V.RAMASUBRAMANIAN, J.

N.BALAYOGI, J.

10th July, 2017.
Ak

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE N.BALAYOGI

Appeal Suit No.491 of 2017
(per VRS, J.)



10th July, 2017.
(Ak)