

**THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

**C.R.P.No.1581 of 2017**

**ORDER:**

This civil revision petition is filed under Article 227 of the Constitution of India by the petitioner/defendant challenging the order dated 20.01.2017 in I.A.No.824 of 2016 in O.S.No.1431 of 2016 passed by the VIII Junior Civil Judge, City Civil Court, Hyderabad dismissing the application filed under Order 7 Rule 11 (b) and (d) of the Code of Civil Procedure (for short 'C.P.C.').

2. The petitioner, who is the defendant in the suit filed petition under Order 7 Rule 11(b) and (d) of C.P.C contending that the property was gifted to him under registered Gift Deed dated 13.07.2015 and the value of the gift deed was Rs.10,70,000/-, but the respondent/defendant valued the suit at Rs.3,70,000/- and paid Court Fee thereon.

3. When the plaint is under valued and the Court directed to pay Court Fee and in the event of failure to pay the Court Fee, the Court shall reject the plaint exercising power under Order 7 Rule 11(b) and (d) of C.P.C.

4. The respondent filed counter denying material allegations asserting that he is the owner of the premises bearing No.19-2-156/40, Tadbund Cross Roads, Bahadurpura, Hyderabad and as such the petitioner/defendant cannot claim ownership over the premises. The respondent filed suit for declaration and possession and it is also admitted that he is claiming right through his father-in-law by way of gift of schedule property orally to his wife,

thereafter she executed a registered gift deed in his favour and that the market value of the suit schedule property as per basic value register maintained by the Registrar is Rs.3,70,000/-.

5. Upon hearing argument of both sides, the trial Court dismissed the petition on the ground that the value of the suit has to be decided only during trial and declined to decide whether the suit was valued properly or not since it is a disputed question of fact.

6. Aggrieved by the order passed by the trial Court, the present revision petition is filed under Article 227 of the Constitution of India on various grounds mainly contending that the Gift Deed dated 13.07.2015 was registered for Rs.10,70,000/-, which represents the market value of the property. But the Court did not look into the value of the document and erroneously deferred the decision on correct value of the suit and declined to grant relief in the petition.

7. During hearing, learned counsel for the petitioner reiterated the contentions raised in the grounds and also before the Court mainly drawing the attention of the Gift Deed dated 13.07.2015, which represents the actual market value of the property. But the trial Court did not consider the specific objection in right perspective and committed an error thereby requested to reject the plaint allowing his application setting aside the order passed by the trial Court.

8. Order 7 Rule 11 of C.P.C deals with rejection of the plaint. The present petition was filed under Rule 11 (b) and (d) of Order 7 of C.P.C. Sub-Rule (b) deals with 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, the Court can reject the plaint. Sub-rule (d) deals with where the suit appears from the statement in the plaint to be barred by any law.

9. Here, it is not the contention of the petitioner that it is barred by any law. But during hearing, learned counsel for the petitioner contended that it is barred by Section 146, 150 and 152 of Mohammadan Law which deal with acceptance and delivery of possession. Section 146 deals with Gift of property held adversely to donor. A gift of property in the possession of a person who claims it adversely to the donor is not valid, unless the donor obtains and delivers possession thereof to the donee, or does all that he can to complete the gift so as to put it within the power of the donee to obtain possession. Section 150 deals with delivery of possession and it is essential to validate a gift that there should be a delivery of such possession as the subject matter of the gift is susceptible. As observed by the Judicial Committee, the taking of possession of the subject matter of the gift by the donee, either actual or constructively, is necessary to complete a gift. Section 152 deals with delivery of possession of immovable property, a gift of immovable property of which the donor is in actual possession is not complete, unless the donor physically departs from the premises with all his goods and chattels, and the donee formally

enters into possession. A recital in the deed of gift that the donor has divested himself and put the donee in possession binds the donor's heirs even if one of the heirs is later found in possession. Such a gift is valid. If the donor has done all in his power to divest himself and put the donee in possession that is enough. None of these provisions debarred the civil Court to entertain any suit either express or by necessary implication. Therefore, the plea that the suit is barred by law and liable to be rejected under Order 7 Rule 11(b) of C.P.C. is misconceived and is without any basis. Therefore, the plaint shall not be rejected on that ground.

10. The second ground raised before the trial Court and this Court is that the suit is under valued. Section 50 of the Court Fee Act reads as follows:

*50. Suits otherwise provided for*

- (1) If no specific provision is made in this Act or in any other law regarding the value of any suit for the purpose of determining the jurisdiction of Courts, value for that purpose and value for the purpose of computing the fee payable under this Act shall be the same.*
- (2) In a suit where fee is payable under this Act at a fixed rate, the value for the purpose of determining the jurisdiction of Courts shall be the market value*
- (3) of the movable property or threefourths of the market value of the immovable property or, where it is not possible to estimate it at a money value the amount stated in the plaint.*

11. Section 24 of the Court Fee Act deals with Court Fee payable on the suit for declaration. Section 24 of the Court Fee Act reads as under:

*In a suit for a declaration with or without consequential relief, not falling under section 25*



*(a) where the prayer is for a declaration and for possession of the property to which the declaration relates, fee shall be computed on the market value of the movable property or three fourths of the market value of the immovable property or on rupees three hundred, whichever is higher.*

*(b) where the prayer is for a declaration and for consequential injunction and the relief sought is with reference to any immovable property, fee shall be computed on one half of the market value of the property or on rupees three hundred, whichever is higher;*

*(c) where the prayer relates to the plaintiffs exclusive right to use, sell, print or exhibit any mark, name, book, picture, design or other things and is based on an infringement of such exclusive right, fee shall be computed on the amount at which the relief sought is valued in the plaint or at which such relief is valued by the Court, whichever is higher;*

*(d) in other cases, whether the subject matter of the suit is capable of valuation or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or at which such relief is valued by the Court, whichever is higher.*

12. Thus, the valuation of the suit for the purpose of jurisdiction must be based on market value of the property. The plaintiff has to produce the market value certificate obtained from the competent authority and file valuation slip as required under Section 10 of the A.P. Court Fee Act. Here it appears that the plaintiff produced the certificate of market value and filed valuation slip, which is basis for determining the value of the suit under Section 50(3) of the A.P. Court Fee Act and payment of Court fee under Section 24 of the A.P. Court Fee and Suits Valuation Act. Even otherwise, Order 7 Rule 11(b) of C.P.C. enables the Court to reject the plaint only when the Court finds that the suit was under valued and directed the plaintiff to pay deficit Court Fee payable on the plaint after

correcting the valuation within the time fixed. But here, the Court did not fix the value and did not conclude that the suit was under valued. But the petitioner raised the contention basing on the gift deed dated 13.07.2015 that the suit is under valued. Therefore, in the absence of any direction question of finding that the suit is under valued by the Court to pay deficit Court fee and failure to make good the deficit Court Fee does not arise. In such a case, the Court cannot reject the plaint exercising power under Order 7 Rule 11(b) of C.P.C. But determination of value can never be on the basis of document produced by the petitioner/defendant and even to exercise jurisdiction under Order 7 Rule 11 of C.P.C. the Court has to look into the statement made in the plaint and not the defence set up in the written statement. Therefore, the document relied on by the petitioner dated 13.07.2015 for Rs.10,70,000/- shall not be looked into for deciding the value of the suit. The jurisdiction under Order 7 Rule 11 of C.P.C. shall be exercised only based on the statement made in the plaint if it does not disclose any cause of action or that the suit was under valued. But none of the allegations made in the plaint disclose that the suit is under valued in the present suit. Hence, the Court cannot reject the plaint based on the document which the petitioner/defendant relied in view of the judgment reported in **Mayar (H.K.) Ltd. & orthers v. Owners & Parties, Vessel M.V.**<sup>1</sup> where the Apex Court held that the plaint cannot be rejected on the basis of allegations made by the defendant in his written statement. Chances of success in a suit are no ground to reject the plaint. Therefore, in

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<sup>1</sup> 2006(2) ALD 36 SC

view of law declared by the Apex Court in the judgment referred supra looking at the statement made in the plaint, the Court has to decide whether there are any grounds to reject the plaint exercising power under Order 7 Rule 11 of C.P.C.

13. Here the trial Court did not find any such ground and even on reappraisal of entire contentions raised before this Court, I find no ground to exercise jurisdiction under Article 227 of the Constitution of India warranting interference with the order passed by the trial Court. The jurisdiction of this Court under Article 227 of the Constitution of India is limited and this Court can exercise such inherent jurisdiction under exceptional circumstances. The scope of revision under Article 227 of the Constitution is limited to find out whether the order under challenge passed by the subordinate Court or Tribunal is within the jurisdictional limit and the main intention of the Article 227 of the Constitution is to keep them within the bounds of their jurisdiction as held in **State through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshar**

**Guru and others**<sup>2</sup> the Apex Court discussed about the scope of jurisdiction under Article 227 of the Constitution of India and in the earlier judgment of the Apex Court in **Hari Vishnu Kamath vs Syed Ahmad Ishaque And Others**<sup>3</sup> laid down certain guidelines regarding jurisdiction to exercise power under Article 227 and also in view of the settled principles referred in the judgment of Apex Court in **Surya Dev Rai v. Ram Chander Rai**<sup>4</sup> this Court has got limited jurisdiction to interfere with the orders of the inferior Court

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<sup>2</sup> 2003(2) RCR (Criminal)

<sup>3</sup> 1955(1) SCR 1104

<sup>4</sup> (2003) 6 SCC 675

in extra-ordinary circumstances and such power has to be exercised sparingly.

14. As discussed above, I find no grounds to interfere with the order passed by the lower Court while exercising power under Article 227 of the Constitution of India, which is supervisory in nature. Hence, the revision petition is liable to be dismissed.

15. Accordingly, the revision petition is dismissed at the stage of admission. However, it is left open to the petitioner to raise plea of under valuation during trial. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in the petition, shall stand closed.

Date: 08.06.2017  
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**M. SATYANARAYANA MURTHY J**

