

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.5113 OF 2016

O R D E R

This civil revision petition, under Article 227 of the Constitution, was filed by the 3rd defendant in O.S.No.208 of 2012 on the file of the learned Principal Junior Civil Judge, Ranga Reddy District at L.B.Nagar, aggrieved by the dismissal of I.A.No.648 of 2016 filed therein. This I.A. was filed by the 3rd defendant under Order 10 CPC to ascertain from the pleadings as to whether the suit was barred by limitation. By docket order dated 13.10.2016, the trial Court observed that the petition under Order 10 CPC filed at that stage was not maintainable and dismissed it opining that it was devoid of merits viewed from any angle but found it fit to resolve the dispute between the parties by framing a preliminary issue.

O.S.No.208 of 2012 on the file of the learned Principal Junior Civil Judge, Ranga Reddy District at L.B.Nagar, was filed by the 1st respondent herein for a declaration that the registered sale deed bearing Document No.3995 of 1990 dated 30.04.1990 was null and void and not binding upon him; a perpetual injunction restraining the 3rd defendant from interfering with his peaceful possession and enjoyment over the suit schedule property; and for costs. While so, the 3rd defendant filed I.A.No.34 of 2015 in the said suit seeking rejection of the plaint under Order 7 Rule 11 CPC. The I.A. was however dismissed by the trial Court *vide* order dated 06.08.2015. Aggrieved thereby, the 3rd defendant filed C.R.P.No.4167 of 2015 before this Court. The CRP was disposed of by a learned Judge of this Court *vide* order dated 02.08.2016. Therein, the learned Judge referred to the plaint averment at para 4 that the cause of action

arose on 27.03.2012 when the 3rd defendant allegedly interfered with the plaintiff's possession and enjoyment over the suit schedule property, whereupon the plaintiff came to know about the registered sale deed, the cancellation of which was sought. The learned Judge also referred to the claim of the 3rd defendant that the plaintiff had knowledge of the 3rd defendant's rights under the subject sale deed in the course of revenue proceedings dating back to the year 2000; that the plaintiff's plea that the cause of action arose only in March, 2012 was therefore false and that the suit was barred by limitation.

The learned Judge opined that as the plaintiff claimed that the suit was within three years from the date of his knowledge of the sale deed, the trial Court could not automatically reject the plaint under Order 7 Rule 11 CPC without inviting the defendants to put forth their stand so as to demonstrate disentitlement of the plaintiff to continue the proceedings. Observing that Order 14 CPC contemplates settlement of issues from the pleadings of both parties and the first hearing commenced at the stage of settlement of issues in terms of Rule 2(g) of the Andhra Pradesh Civil Rules of Practice and Circular Orders, 1980 (for brevity, 'the Rules of 1980'), the learned Judge held that a preliminary issue could be framed as to whether the bar of limitation and/or lack of cause of action applied and then referred to ***T.ARIVANDANDAM V/s. T.V.SATYAPAL***¹, wherein it was observed thus:

'We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First

¹ (1977) 4 SCC 467

Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful - not formal - reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII Rule 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever 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 Order 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, (Cr. 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." '

The learned Judge thereupon concluded that it was premature to express any opinion in this regard from the law laid down on the scope of Order 10 CPC that has to be adopted by the trial Court to apply in the case on hand. The learned Judge further added that even if that stage had crossed, there was no bar for deciding it as a preliminary issue and accordingly disposed of the revision petition, holding that a reading of the complaint averments did not indicate clearly as to whether a cause of action was lacking or whether it was barred by limitation, warranting rejection of complaint, but giving liberty to the 3rd defendant, the petitioner therein, to take recourse to Order 10 CPC or Order 14 CPC, as the case may be.

Taking a cue from this order, the 3rd defendant filed I.A.No.648 of 2016 in the suit under Order 10 CPC read with Section 151 CPC.

At this stage, it would be appropriate to examine Order 10 CPC titled 'Examination of Parties by the Court'. Order 10 Rule 1 CPC states to the effect that at the first hearing of the suit the Court shall ascertain from each party or its pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court is required to record such admissions and denials. Order 10 Rule 1A CPC empowers the Court, after recording such admissions and denials, to direct the parties to the suit to opt for settlement outside the Court in terms of Section 89(1) CPC. Order 10 Rule 1B CPC and Order 10 Rule 1C CPC deal with the procedure to be followed thereafter when the suit is referred under Rule 1A for settlement out of Court. Order 10 Rule 2 CPC empowers the Court, either at the first hearing of the suit or at any subsequent hearing, to orally examine any party or any other person to elucidate matters in controversy or to answer any material question relating to the suit. Order 10 Rule 3 CPC states that the substance of such examination shall be reduced to writing by the Judge and shall form part of the record. Order 10 Rule 4 CPC speaks of the consequences of refusal or inability of a pleader of a party or any person accompanying him.

In terms of the law laid down by the Supreme Court in **T.ARIVANDANDAM¹**, when the Court is of the opinion that the plaint is manifestly vexatious or meritless and if a clear ground for its rejection under Order 7 Rule 11 CPC is not made out by creating an illusion of a cause of action, the Court must nip the suit in the bud at the first hearing by examining the party searchingly under Order 10 CPC. As is clear from Rule 2(g) of the Rules of 1980, the first hearing

of the suit includes hearing of the suit for settlement of issues and any adjournment therefor. Thus, the power under Order 10 CPC can be exercised at any stage before completion of the settlement of issues for trial.

Perusal of the order under revision reflects that the trial Court was well aware of the order passed by this Court in C.R.P.No.4167 of 2015. So much so, the trial Court extracted the operative portion thereof, giving liberty to the 3rd defendant in the suit to take recourse to either Order 10 CPC or Order 14 CPC, as the case may be. The trial Court then went on to state that as the subject I.A. was filed when the suit was at the trial stage, the petition under Order 10 CPC was not maintainable. Referring to Order 14 Rule 5 CPC, the trial Court observed that it was empowered thereby to frame an additional issue at any stage, if the same was required, and in terms of the observations made by this Court in C.R.P.No.4167 of 2015, it would be fit to resolve the dispute between the parties by framing a preliminary issue. However, the trial Court did not deem it necessary to set out what the preliminary issue was.

Though this Court finds merit in the contention urged by the learned counsel for the petitioner/3rd defendant that the order under revision practically reads as if the trial Court sat in appeal over the order passed by this Court in C.R.P.No.4167 of 2015, the ultimate conclusion arrived at by the trial Court does not warrant interference. The order dated 02.08.2016 passed in C.R.P.No.4167 of 2015 makes it clear that this Court was not certain on the facts available as to whether Order 10 CPC would still have application, as the provisions thereof would apply only at the 'first hearing' of the suit. That is the reason why this Court gave liberty to the 3rd defendant in the suit to

take recourse to either Order 10 CPC or Order 14 CPC, as the case may be. Once the issues were settled and the trial commenced, Order 10 CPC would cease to have application. Admittedly, the trial in the suit on hand has already commenced. That being so, examination of the parties by the trial Court under Order 10 CPC can no longer be taken recourse to. To that extent, the opinion expressed by the trial Court does not warrant interference.

However, the trial Court, instead of making grandiose statements like 'procedure is procedure for anyone and everyone', ought to have been a little circumspect while wording its order. Judicial discipline requires the trial Court to be more mindful and temperate in the use of language. All the more so, when the trial Court was adjudicating an application, filed ostensibly on the strength of the permission granted by this Court.

However, as a preliminary issue on the question of the suit being barred by limitation seems to have been framed, the trial Court shall proceed to first deal with the said issue before taking up the trial in relation to the other issues arising in the suit. This would not only save the valuable time of the Court but also prevent vexatious/frivolous litigation, in the event the finding of the trial Court on the preliminary issue goes against the plaintiff.

Subject to the above observations, the Civil Revision Petition is dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

2nd FEBRUARY, 2017

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