

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT  
AND  
HON'BLE SRI JUSTICE N. BALAYOGI**

**C.C.C.A.No.235 of 2016**

**JUDGMENT** : *(Per Hon'ble Sri Justice Suresh Kumar Kait)*

Vide the present appeal, the appellant-State of Telangana has assailed the order dated 6<sup>th</sup> September, 2016, passed by the XXV Additional Chief Judge, City Civil Court, Hyderabad in I.A.No.679 of 2016 in O.S.No.1016 of 2013, whereby, the application filed by the respondent-defendants under Order 7 Rule 11 CPC has been allowed on the ground that the plaint does not disclose cause of action.

2. Brief facts of the case are that initially respondents had filed O.S.No.1229 of 1993, seeking eviction of the appellant herein from the suit property on the ground that the said property was purchased under registered sale deed on 22 Farwadi 1358 Fasli from Nawab Rysat Bahudur and the appellant had obtained the said property on lease and failed to deliver back possession having committed default in payment of rents. The respondents succeeded in the suit. However, the appellant had unsuccessfully contested upto the Supreme Court. The Hon'ble Supreme Court, by judgment dated 08.08.2012, passed the following order :

*“for the aforesaid reasons we set aside the findings of the trial Court, the first appellate court and the High Court on title, but we maintain the decree for eviction. We however, order whether the appellants will vacate the suit land within six months from today and further make it clear that the suit, if any, filed by the appellants for a declaration of title and*

*consequential relief cannot be entertained by the court, unless the appellants first vacate and hand over the possession to the respondents. The judgments of the court below are modified accordingly. The appeal is allowed to the extent indicated above.”*

3. Thereafter, suit in O.S.No.1016 of 2013 was filed by the appellant on 08.11.2013 for declaration of title and recovery of possession. The respondents had filed written statement on 24.03.2014, thereafter, filed I.A.No.679 of 2016 seeking rejection of plaint on the ground that there is no cause of action for filing the suit and the suit also lacks cause of action.

4. Sri D.Prakash Reddy, learned Advocate-General appearing on behalf of the appellant-State submitted that it is the specific case of the appellant that the plaint, when read in toto, does disclose cause of action since the plaint contents bundle of facts which clearly demonstrates the case of the appellant. The suit property originally was a jagir village and same was forming part of the estate of Sri Raja Shiv Raj Bahadur and the same merged with Diwani (Government) consequent upon the coming into force of Jagir Abolition Regulation 1358 (1948). Therefore, the contention of the respondents that they purchased the property under a registered sale deed from Nawab Ryasat Bahudur is not correct and said sale deed does not confer any right or title in favour of respondents over the suit schedule property. Learned Advocate-General further submitted that it is the case of the State that the property stood vested with the Government as per the entries in revenue records and land stood recorded

as Khatedar/Pattadhar in the name of “Royal Air Force”. The appellant pleaded in the plaint that a survey was conducted under the provisions of A.P. Survey and Boundaries Act, 1923 and during the said survey, no objections were received. Therefore, final notification was also issued on 22<sup>nd</sup> April 1976. As per the said survey, in Column No.10, the land was recorded as “Government Porombok” and in Column No.20, name of “Hospital-G-Mental Hospital” was recorded. Late Sri Raghukul Pershad, who worked in the roads and buildings department, created certain lease deeds and rental receipts and initiated proceedings in O.S.No.1229 of 1993 seeking eviction of State from the said premises. However, under the mistaken facts, rents were remitted to the respondents. The alleged lease deeds claimed by the respondents are illegal and invalid as the Executive Engineer/Superintendent, Government Mental Hospital, had no authority to execute such lease deeds as there was no delegation of powers by his Excellency, the Governor of Andhra Pradesh. Moreover, the Hon’ble Supreme Court had set aside the finding on the title in the earlier round of litigation as mentioned above. Therefore, the appellant filed the suit before the Court below.

5. The learned Advocate-General further submitted that for the purpose of attracting the provisions of Order 7 Rule 11 (a), the entire plaint averments have to be read together, to gather the cause of action. The appellant has categorically stated the facts which constitute a cause of action, particularly with reference to the decision of the Apex Court in O.S.No.1229 of 1993, wherein, the Apex Court has set aside the findings on the issue of title thereby leaving it open to the State to seek

appropriate relief of title. He further submitted that the Court below has committed serious error in holding that the plaint does not disclose cause of action. There is a fundamental error in the very pleading of respondents, therefore, the Court below should not have entertained the application as the same does not fall within the teeth of requirements under Order 7 Rule 11 (a) CPC. The Court below ought to have appreciated that the case of appellant could not be thrown away at the very threshold when the Apex Court has specifically set aside the findings relating to title in the earlier round of litigation. The appellant made specific allegations, which on the face of it, are triable in nature. However, the Court below committed serious error in holding that the plaint is liable to be rejected under Order 7 Rule 11 CPC. Moreover, the findings of the Court below in para 14 of the impugned order that the appellant has not pleaded mistake of fact and the said mistake of fact is not taken as a defence, is a finding recorded contrary to the record, as in fact, the said contention of mistake of fact was pleaded as a defence in earlier round of litigation. In fact, even in the present plaint, the pleading with regard to mistake of fact has been pleaded at para 25 of the plaint. The facts relating to fraud were specifically pleaded that Late Raghukul Pershad fabricated the lease deeds and rental receipts and that the suit property never formed a part of the estate of Fakrul-ul-Mulk (father of Nawab Ryasat Bahudur). These aspects of fraud are a matter of evidence to be lead at the time of trial.

6. On the other hand, learned Senior Counsel Sri P.Sri Ram, appearing on behalf of respondents submitted that in the earlier round of

litigation, the respondents in this appeal were the plaintiffs. They filed a suit for mere eviction, in which, the appellant-Government took the defence that they have title to the property and hence they cannot be treated as tenants. An issue was framed to that effect and it was held in favour of the respondents-plaintiffs. This issue was confirmed upto the Supreme Court. Before the Supreme Court, it was contended that though the landlord i.e. the respondents filed only a suit for eviction, their title was declared, which is not necessary in an eviction suit. More over, the Court fee paid was only for eviction and not for declaration. Therefore, the Supreme Court found that the finding in favour of respondents in the suit for declaration of title is superfluous and set aside the same. The relationship of landlord and tenant, and the orders of eviction were confirmed.

7. Learned Senior Counsel for respondents further submitted that the Supreme Court has not left open the question so as to create a new cause of action for the Government to agitate. As the respondents succeeded in the suit for eviction, their title has become final and it cannot be reopened. Therefore, there is no fresh cause of action for the appellant-Government apart from the contentions raised in the earlier suit. As far as the permission of the Supreme Court to file a fresh suit is concerned, it is submitted that the Supreme Court merely said that the appellant shall first deliver the possession within six months and made it clear that the suit, if any, filed by the appellant for declaration of title and consequential relief, cannot be entertained by the Court unless the appellant first vacates and hands over the possession. Thus, it is not a

permission granted, but a condition that the appellant-Government shall vacate the premises before taking any action. Accordingly, there is neither approval nor permission in the orders of the Apex Court.

8. The learned Senior Counsel for respondents has relied on the judgment of Supreme Court in ***Shiv Kumar Sharma v. Santosh Kumari***<sup>1</sup>, wherein, it is held at para 29 as under :

*“.....Civil court does not grant leave to file another suit. If the law permits, the plaintiff may file another suit but not on the basis of observations made by a superior court.”*

9. Learned Counsel further submitted that the appellant has not relied upon a single new document or a cause of action. In fact, all the title documents which are now being relied upon, were being relied upon as a defence to eviction suit. They were rejected in the earlier round of litigation, as the High Court in writ petitions, held that this land does not belong to Government. There is not a single fact which is alleged independent of the earlier litigation. Therefore, this is a mere abuse of the process of Court and mis-interpretation of judgment of Supreme Court. No cause of action would arise on the basis of observations made by the Supreme Court, even if it is a superior Court. Thus, the present appeal is liable to be dismissed.

10. Having heard the learned counsel for the parties, we have perused the material on record.

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<sup>1</sup> (2007) 8 SCC 600

11. It is not in dispute that the respondents initially had filed the suit O.S.No.1229 of 1993, seeking eviction of the appellant herein. The respondents succeeded in the said suit and the appellant herein unsuccessfully contested upto the Supreme Court. However, it is pertinent to mention here that the Supreme Court set aside the findings of the trial Court, the first appellate Court and this Court on title, but maintained the decree for eviction. Liberty was given to the appellant by the Supreme Court to file suit for declaration of title and consequential relief with the rider that the appellant shall first handover possession of the suit property to the respondents and only thereafter, suit if any, filed by the appellant for declaration of title and consequential relief will be entertained. Thereafter, the suit O.S.No.1016 of 2013 was filed by the State on 08.11.2013.

12. I.A.No.679 of 2016 was filed by the respondents under Order 7 Rule 11 CPC, seeking the Court to reject the plaint in O.S.No.1016 of 2013. While deciding the said I.A., the Court below framed issues as under :

- “1. Whether the plaint does not disclose cause of action ?
2. Whether the plaint discloses that it is barred by law of limitation and principles of res judicata ?
3. Whether the plaint is liable to be rejected ?”

13. It is not in dispute that issue Nos.1 and 3 are decided in favour of respondents and issue No.2 is decided in favour of the appellant.

14. The case of the appellant is that the suit property originally was a jagir village and the same was forming part of the estate of Sri Raja Shiv

Raj Bahadur and it was merged with Diwani (Government) consequent upon coming into force of Jagir Abolition Regulation 1358 (1948). Therefore, the contention of respondents that they purchased the property under a registered sale deed from Nawab Ryasat Bahudur is not correct and said sale deed does not confer any right or title on the respondents over the suit schedule property. Further case of appellant is that the property stood vested with the Government as per the entries in the revenue records, as it stood recorded as Khatedar/Pattadhar in the name of "Royal Air Force". A survey was conducted under the provisions of A.P. Survey and Boundaries Act, 1923 and during the said survey, no objections were received. Accordingly, final notification was also issued on 22<sup>nd</sup> April 1976. As per the said survey, in Column No.10, the land was recorded as "Government Porombok" and in Column No.20, name of "Hospital-G-Mental Hospital" was recorded. Further case of the appellant is that Late Sri Raghukul Pershad, who worked in the roads and buildings department, created certain lease deeds and rental receipts, thereafter, based on that, initiated proceedings in O.S.No.1229 of 1993 seeking eviction of the State from the said premises. However, under the mistaken facts, rents were remitted to the respondents herein. The alleged lease deeds claimed by the respondents were illegal and invalid as the Executive Engineer/Superintendent, Government Mental Hospital, had no authority to execute such lease deeds as there was no delegation of power by the Governor of Andhra Pradesh.

15. For the purpose of attracting the provisions of Order 7 Rule 11 (a) of CPC, the entire averments made in the plaint have to be read together

to gather the cause of action. The appellant, in the suit O.S.No.1016 of 2013, has categorically stated the facts mentioned above, which constitute cause of action, particularly with reference to the decision of the Apex Court dated 08.08.2012 in O.S.No.1229 of 1993, wherein, the Apex Court has set aside the findings of the trial Court, first appellate Court and this Court on the issue of title, thereby leaving it open for the State to seek appropriate relief of title.

16. It is pertinent to mention here that the finding recorded by the learned trial Court in para 14 of the impugned order dated 6<sup>th</sup> September, 2016 that the appellant/plaintiff has not pleaded mistake of fact and the said mistake of fact is not taken as defence, is a finding recorded contrary to the record, whereas, the said contention of mistake of fact has been pleaded as a defence even in earlier round of litigation. Moreover, in suit O.S.No.1016 of 2013, an averment is made with regard to mistake of fact at para 25 of the plaint. The facts relating to fraud were specifically pleaded that Late Raghukul Pershad fabricated the lease deeds and rental receipts and that the suit property never formed part of the estate of Fakrul-ul-Mulk (father of Nawab Ryasat Bahudur). These aspects are a matter of evidence/proof to be proved before the trial Court after leading the evidence. However, the trial Court, at the premature stage, rejected the suit O.S.No.1016 of 2013, without giving opportunity to the appellants to prove their case on title of the property in question.

17. In the case of ***State of Orissa v. Klockner and Co. & another***<sup>2</sup>, the Hon'ble Supreme Court held as under :

*“In the present case on a fair reading of the petition filed by the defendant under Or.VII Rule 11 CPC, it is clear that the case of the applicant is that the plaintiff has no cause of action to file the suit. It is not specifically pleaded by the applicant that the plaintiff does not disclose cause of action”*

The above proposition squarely covers the point in issue in the present case.

18. Further, the Apex Court in ***Mayar (HK) Ltd. & others v. Owners and Parties, Vessel MV Fortune Express & others***<sup>3</sup>, held as under :

*“From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of allegations made by the defendant in his written statement or in an application for rejection of the plaint. The court has to read the entire plaint as a whole to find out whether it discloses cause of action and if it does, than the plaint cannot be rejected by the court exercising the powers under Or.VII Rule 11(a) CPC.....In the present case, the averments made in the plaint do disclose the cause of action and therefore the High Court has rightly said that the powers under Or.VII Rule 11 CPC cannot be exercised for rejection of the plaint filed by the plaintiff/appellants.”*

The above judgment was followed by the Apex Court in ***Kuldeep Singh Pathania v. Bikram Singh Jaryal***<sup>4</sup>.

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<sup>2</sup> (1996) 8 SCC 377

<sup>3</sup> (2006) 3 SCC 100

<sup>4</sup> (2017) 5 SCC 345

19. In addition to above, in the case of *Mustigulla @ Namaswamy Hemanth Kumar v. M/s.Abjya Infrastructures Pvt. Ltd. & others*<sup>5</sup>, this Court, while dealing with the issue relating to rejection of plaint for want of cause of action, held that the cause of action is actually a bundle of facts, which, if taken with the law applicable to them, gives the plaintiff a right to relief.

20. It is the specific case of the appellant that the suit property originally was a Jagir village and the same was forming part of the estate of Sri Raja Shiv Raj Bahadur and the same merged with Diwani (Government) consequent upon the coming into force of Jagir Abolition Regulation 1358 (1948). The property stood vested with the Government as per the entries in revenue records and land stood recorded as Khatedar/Pattadhar in the name of “Royal Air Force”. The appellant had conducted survey under the provisions of A.P. Survey and Boundaries Act, 1923 and during the said survey, no objections were received from any corner including the respondents. Therefore, final notification was also issued on 22<sup>nd</sup> April, 1976. As per the said survey, in Column No.10, the land was recorded as “Government Porombok” and in Column No.20, name of “Hospital-G-Mental Hospital” was recorded. It is alleged that Late Sri Raghukul Pershad, who worked in the roads and buildings department, created certain lease deeds and rental receipts. Based on that, the respondents initiated proceedings in O.S.No.1229 of 1993 seeking eviction of State from the said premises. However, under the mistaken facts, rents were remitted to the respondents. The alleged

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<sup>5</sup> 2016 (6) ALT 244

lease deeds claimed by the respondents are illegal and invalid as the Executive Engineer/Superintendent, Government Mental Hospital had no authority to execute such lease deeds as there was no delegation of powers by his Excellency, the Governor of Andhra Pradesh. Moreover, the Supreme Court had set aside the findings on the title in earlier round of litigation as mentioned above.

21. In addition to above, for the purpose of attracting the provisions of Order 7 Rule 11(a) CPC, the entire plaint averments have to be read together, to gather the cause of action. The appellant has categorically stated the facts which constitute a cause of action, particularly with reference to the decision of the Supreme Court in O.S.No.1229 of 1993, wherein, the Hon'ble Supreme Court has set aside the findings of the trial Court, first appellate Court and this Court on the issue of title, thereby, leaving it open to the State to seek appropriate relief of title. Further, the findings of Court below in para 14 of impugned order that the appellant has not pleaded mistake of fact and that fake documents are created by the respondents, is a finding recorded contrary to the record, as in fact, the said contentions of mistake of fact and creation of fake documents by the respondents, have been pleaded as a defence in earlier round of litigation and in the present suit filed by the appellant. The afore-noted bundle of facts disclose cause of action. Therefore, the learned Court below has wrongly allowed the application filed by the respondents under Order 7 Rule 11 (a) CPC. If the appellant-State is not allowed to lead evidence on the title of the property in question, this property shall remain in possession of respondents, however, without any title, because,

the findings of the trial Court rendered in O.S.No.1229 of 1993 have been set aside by the Supreme Court.

22. In view of the facts recorded above, we are of the considered opinion that the appellant has laid sufficient grounds and foundation to establish the various pleadings, for which, the State is entitled for trial in the suit O.S.No.1016 of 2013 by leading the evidence. However, the Court below has wrongly rejected the plaint by allowing I.A.No.679 of 2016.

23. Accordingly, we hereby set aside the order dated 6<sup>th</sup> September 2016, passed by the XXV Additional Chief Judge, City Civil Court, Hyderabad, in I.A.No.679 of 2016 in O.S.No.1016 of 2013. The said suit is restored and the trial Court shall proceed with the suit.

24. Appeal is accordingly allowed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

**SURESH KUMAR KAIT, J**

**N. BALAYOGI, J**

10<sup>th</sup> November, 2017

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