

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P. NO. 3280 OF 2011

ORDER:

This petition under Article 227 of Constitution of India is filed by the revision petitioners/defendants 2 and 3 in I.A.No.344 of 2011 in O.S.No.838 of 2007 dated 14.07.2011 passed by the III Additional District Judge, Ranga Reddy District at L.B.Nagar dismissing the application filed under Order VII Rule 11 r/w 151 CPC to reject the plaint.

2. The petitioners herein are the defendants 2 and 3 in O.S.No.838 of 2007 before the III Additional District Judge, Ranga Reddy District at L.B.Nagar. The respondents 1 to 6/plaintiffs filed suit for partition of schedule property and for other reliefs claiming preliminary decree for partition and for other consequential reliefs. The plaintiffs 1, 4 to 6 are the daughters of the deceased Dasari Advaiah and claiming share in the joint family property alleging that the schedule property is the ancestral joint family property of the plaintiffs and defendant No.1. Plaintiff No.1, late Smt.D.Suguna and plaintiffs 4 to 6 are the sisters of first defendant. Dasari Advaiah father of Sugunamma and plaintiffs 4 to 6 and first defendant, died intestate on 10.02.1977 leaving behind him five daughters, first defendant and his wife late Saraswathi as his only heirs to succeed the above property and the said Saraswathi wife of late Advaiah also died intestate on 23.03.1996 and thereby late Sugunamma, plaintiffs 4 to 6 and first defendant became entitled to claim share in the entire Hindu joint family property and claimed partition.

3. The defendants 2 and 3, the petitioners before the trial Court and this Court, filed petition under Order VII Rule 11 CPC to reject the plaint on the ground that the respondents 1 to 6 herein are not coparceners on the date of death of Advaiah on 10.02.1977 and they are not entitled to claim any share in the ancestral property by virtue of Hindu Succession Act i.e. law applicable on

the date of death of Advaiah. The State Amendment to Hindu Succession Act 1986 and the Central Amendment to Hindu Succession Act, 2005 will have no application to the claim of the respondents/plaintiffs and they are not entitled to claim any relief much less partition of the schedule property and thereby the plaint is liable to be rejected.

4. The second ground urged before the Court is that the plaintiffs have no cause of action to file the suit against the petitioners/Defendants 2 and 3 in the suit as they were not coparceners on the date of commencement of the Hindu Succession Act i.e. on the date of death of Advaiah or even as per the State and Central Amendments to Hindu Succession Act. Therefore, the plaint is liable to be rejected under Order VII Rule 11(a) of CPC and finally contended that the claim of the respondents 1 to 6 even if true, it is clearly barred by limitation and liable to be rejected at the threshold and prayed to reject the plaint.

5. The respondents filed counter admitting filing of suit inter alia contending that as per Section 8 of Hindu Succession Act, 1956 the property devolved on the plaintiffs-respondents 1 to 6 and 7th respondent-first defendant and even as per Section 6 of Hindu Succession Act, 2005, the respondents 1 to 6 (plaintiffs) are entitled to claim share in the property. He also contended that the plaint discloses cause of action and when the plaint discloses cause of action, the truth or otherwise in the cause of action pleaded in the plaint cannot be examined while deciding the application under Order VII Rule 11 CPC and that suit is within limitation, prayed for dismissal of the petition.

6. Upon hearing argument of both the counsel, the trial Court by docket order, dated 14.07.2011 dismissed the application while observing that the rights of the plaintiffs shall be decided after full-fledged trial and at this stage the plaint cannot be rejected at the threshold simply on contention of petitioners/defendants 2 and 3 alleging that Hindu Succession Act is not applicable.

7. Aggrieved by the docket order passed by the III Additional District Judge, the present revision is filed on various grounds, mainly on the ground that both under Section 6(3) of Hindu Succession Act, 1956, and the Amendment Act, 2005, the plaintiffs/respondents 1 to 6 are not entitled to claim any share as Advaiah died much prior to commencement of Amendment to Hindu Succession Act both by State and Central. Therefore, the plaintiffs are disentitled to claim any reliefs and the cause of action mentioned in the plaint is illusory and the claim is barred by limitation. Therefore, the plaint is liable to be dismissed under Order VII Rule 11 (a) (d) of C.P.C., but the trial Court passed cryptic order even without adverting to any of the contentions raised before the Court and passed cryptic order, simply observing that the entitlement of the respondents 1 to 6 herein to claim share in the property can be decided only after full-fledged trial. Therefore, the cryptic order cannot be sustained.

8. Learned counsel for the petitioners during hearing contended that in view of the judgment of Apex Court in PRAKASH AND OTHERS v. PHULAVATI AND OTHERS¹ to claim share in the property by females by invoking Section 6 of Hindu Succession (Amendment) Act, 39 of 2005, they must be living daughters and coparceners as on 9.9.2005, irrespective of date of birth of daughter and coparcener who died thereafter. Disposition, alienation or partition which had taken place before 20.12.2004 under unamended provision would remain unaffected and transaction of partition effected after that date would be governed by Explanation. So, on the strength of the principle it is contended that, Advaiah died on 10.02.1977, the petitioners are entitled to share invoking section 6 as amended by Central Act. He further contended that cause of action is pleaded in the plaint is illusory and clever drafting of plaint cannot permit to continue suit and further contended that the claim of the plaint is hopelessly barred by limitation and prayed to allow the revision setting aside the

¹ (2016) 2 SCC 26

order passed by the III Additional District Judge and reject the plaint at the threshold.

9. Per contra, Sri J.Prabhaker, per J Venkateshwar Reddy, counsel for the respondents contended that respondents 1 to 6 being the daughters and descendants of their parents are entitled to claim share in the schedule property and they claim that the schedule property is the ancestral joint family property and governed by Section 8 of the Hindu Succession Act which devolved on them or even otherwise they are entitled to claim benefit under Section 6 of the Act as amended by Central Act. Therefore, at this stage, the claim of the respondents 1 to 6/plaintiffs cannot be thrown overboard at the threshold as the dispute whether the plaintiffs are entitled to claim share by devolution or by survivorship and such question can be decided only after trial since it was a disputed question of fact. Even otherwise, when Advaiah died leaving behind him his wife and the 7th respondent, first defendant and daughters allegedly to succeed their estate. Assuming for a moment that the daughters are not entitled, only son and wife of the deceased Advaiah are entitled to claim share, by notional partition, the wife of Advaiah is entitled to claim half share along with his son being Class-I heir. After the death of mother of the respondents 1 to 7, plaintiffs 1 to 6 and first defendant, the respondents 1 to 6 are entitled to claim share along with 7th respondent in the share of their mother and it is a question of fact to be decided. Therefore, at the threshold the claim of the respondents 1 to 6 cannot be thrown out. He also contended that when there is no cause of action in the suit and the cause of action pleaded in the plaint is illusory, the plaint cannot be rejected when the plaint discloses cause of action and placed reliance on the judgment of Division Bench of this Court reported in *MUSTIGULLA @NAMASWAMY HEMANTH KUMAR v. M/S. ABHAYA INFRASTRUCTURES PRIVATE LIMITED AND OTHERS*². He also further contended that question of

² 2016 (6) 244 (D.B.)

limitation is a mixed question of fact and law on the ground that it is barred by limitation, the plaint cannot be rejected. He placed reliance on the judgment of Apex Court reported in VAISH AGGARWAL PANCHAYAT v. INDERKUMAR AND OTHERS³. On the strength of the law declared by the Apex Court, he supported the order passed by the trial Court.

10. Considering rival contentions and the material available on record, the points that arise for consideration are as follows:

(i) Whether the plaint can be rejected on the ground that the cause of action pleaded in the plaint is illusory or untrue by exercising power under Order VII Rule 11(a) of CPC?

ii) Whether the plaint is liable to be rejected on the ground that suit claimt is barred by limitation by exercising power under Order VII Rule 11(d) of CPC?

iii) Whether the plaint is liable to be rejected on the ground that they are not entitled to claim right as coparceners along with the plaintiffs being female are disentitled to claim share on par with the son 7th respondent, first defendant in view of judgment of Apex Court in Prakash case (1st cited supra), if so, the order passed by the trial Court is liable to be set aside?

11. POINT NO.1: The first and foremost contention raised before the trial court is that the cause of action pleaded in the petition is illusory and on the basis of such cause of action, the plaint is liable to be rejected and he would contend that the very clever drafting of a plaint is not sufficient to continue the /is unnecessarily before the court and this type of contentions before the courts would not only waste the valuable time of the court but also the time of the petitioners. He has drawn the attention of this Court to the judgment of Apex Court in T. ARIVANDANDAM v. T.V.SATYAPAL AND ANOTHER⁴ where the Apex Court emphasized the need for trial Judge to call the bluff, if by clever drafting, an illusion of a cause of action is created and the court at the threshold reject

³ 2015 SCC ONLINE SC 751

⁴ (1977) 4 SCC 467

such plaint at the stage of examination of parties under Order X of CPC. But, it is difficult for him to conclude that the cause of action is illusory on account of clever drafting. Even assuming for a moment, that they are disentitled to claim right under Section 6 of Hindu Succession Act as amended by Central and State, Section 29-A of State Amendment to Hindu Succession Act, still the allegations in the plaint would show that Advaiah died intestate in the year 1977 leaving behind him his son, the defendants and his wife who died, later. The property was devolved upon Advaiah from his father. In such a case, the succession is governed by Section 8 or Section 6 is a question to be decided and whether the property is a coparcenary property or Hindu joint family property is another question to be decided and apart from that whether there is any female intervention in the succession is also to be examined if for any reason wife and son of Advaiah succeeded his estate being the Class-I heirs consequent upon his death. After the death of wife of Advaiah, the daughter Sugunamma and plaintiffs 4 to 6 and the first defendant are entitled to claim share by virtue of Section 15 of Hindu Succession Act consequent upon death of their mother. Therefore, at this stage the claim of the plaintiffs cannot be thrown out since complicated questions of fact are required to be examined in view of the allegations made in the plaint. In any view of the matter, Order VI Rule 11(a) of CPC enables the court to reject the plaint when the plaint does not disclose any cause of action. But, the cause of action is a bundle of facts and it is nothing but giving rise to claim right in the property. Therefore, on the allegation that the cause of action for the claim in the plaint is illusory or untrue, the court cannot reject the plaint exercising Order VII Rule 11(a) of CPC since the court is required to examine the pleadings in a meaningful sense and not formal reading and if the court finds that the claim is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, the court is bound to reject the plaint exercising Order VII Rule 11(a) of CPC in view of law declared by the Apex

Court in SOPAN SUKHDEO SABLE AND OTHERS⁵. Therefore, the allegations made in the plaint alone shall be read and if the court prima facie concludes that on meaningful consideration of the plaint concludes that the claim is vexatious, the court can reject the plaint exercising power under Order VII Rule 11(a) of CPC. But, here at this stage, it is difficult to conclude that the cause of action i.e. the right to sue for partition is illusory and meritless or vexatious at this stage. Therefore, based on the contention that the cause of action pleaded in the plaint is illusory, the plaint cannot be rejected since the plaint discloses clear cause of action i.e. the right to sue for partition. Hence, I find no ground to reject the plaint by exercising power under Order VII Rule 11(a) of CPC. Accordingly, this point is answered.

12. POINT NO. 2: The ground urged before this Court is that Article 110 of Limitation Act governs the limitation for claiming partition and thereby the claim is barred by limitation. Learned counsel for the respondents would contend that limitation is a mixed question of fact and law and by invoking Order VII Rule 11 (d) of CPC, the plaint cannot be rejected and placed reliance on judgment of Apex Court in VAISH AGGARWAL PANCHAYAT (3rd cited supra). The Apex Court while deciding the identical issue noticed conflict between various High Courts and the apparent conflict of opinion expressed by the Apex Court in N.V. SRINIVASA MURTHY v. MARIYAMMA⁶ AND POPAT AND KOTTECHA PROPERTY v. STATE OF INDIA STAFF ASSN.⁷ the Court held that whether the words 'barred by law' under Order VII Rule 11(d) CPC would also include the ground that it is barred by the law of limitation. But, the three Judge Bench opined that there was no conflict of opinion and thereafter the matter came back to the Division Bench for adjudication. The Division Bench reproduced what has been stated by the three-Judge Bench which is as under:

⁵ (2004) 3 SCC 137

⁶ (2005) 5 SCC 548

⁷ (2005) 7 SCC 510

“It is not the case of either side that as an absolute proposition an application under Order VII and Rule 11(d) can never be based on the law of limitation. Both sides state that the impugned judgment is based on the facts of this particular case and the question whether or not an application under Order VII Rule 11(d) could be based on law of limitation was not raised and has not been dealt with. Both sides further state that the decision in this case will depend upon the facts of this case.”

13. After so stating, the Division Bench opined that in the facts of the said case, the suit could not be dismissed as barred by limitation without proper pleadings, framing of issue on limitation and taking evidence, for question of limitation is a mixed question of fact and law and on ex-facie reading of the plaint could not be held that the suit was barred by time. If the principle laid down in the above judgment is applied to the present facts of the case, it is clear that the plaint cannot be rejected on the ground of bar of limitation as it is a mixed question of fact and law and an issue is required to be framed and decided by the court at the end of the trial. Therefore, rejection of the plaint on the ground that it is barred by limitation is an error. In the present facts of the case, it is difficult to hold that the suit is barred by law of limitation applying Article 110 of Schedule under the Limitation Act. The same view is expressed by Division Bench of this Court in *MUSTIGULLA @ NAMASWAMY HEMANT KUMAR* (2nd cited supra) and the Division Bench of this Court held that limitation is a mixed question of fact and law and plea of limitation set up by respondents on ground that plaintiff was ousted from the property more than 12 years ago is a question of fact. Therefore, on the ground of bar of limitation the plaint shall not be rejected. Thus, applying the principles in the above two judgments, it is difficult for me to accept the contention of the learned counsel for the petitioner in this petition. Hence, on this ground that the suit claim is barred by limitation, the plaint cannot be rejected at the threshold. Accordingly, the point is answered in favour of the respondents and against the petitioners.

14. POINT NO. 3: The last ground urged before this court is that as the father of the respondents 1 to 7/plaintiffs and first defendant died in the year 1977 and

they are governed by law prevailing on the date of partition but the in the present case, the suit is filed after long lapse of time i.e. in the year 2007. If the law governing the succession among the Hindus on the date of succession is applied, the respondents 1 to 6 are disentitled to claim share in the property and they are not entitled to claim right under A.P. Amendment to Hindu Succession Act. As discussed in the first point, the entitlement or disentitlement of the respondents 1 to 6, the plaintiffs, cannot be decided at this stage in view of controversial facts pleaded in the plaint. Even according to the judgment in PRAKASH and others' case referred supra to claim right by virtue of Central Amendment to Section 6, the living daughters of living coparceners are alone entitled. But, here father, coparcener was not alive as he died in the year 1977 by the, the respondents were minors. If really their claim is confined to section 6 as amended by Central Act, they are disentitled to claim share in view of the principle laid down in Prakash case (1st cited supra). But, according to Sugunamma, plaintiffs 4 to 6, wife of the deceased Advaiah Saraswathi who died in the year 1993 they succeeded to the share of the deceased Advaiah. Even if these petitioners are disentitled to claim right by virtue of Section 6 as amended by Central Act, still they are entitled to claim share in the share of their mother Saraswathi who died in the year 1993 by virtue of Section 15 of Hindu Succession Act. But, all these disputed questions requires trial and at this stage by exercising power under Order VII Rule 11 (d) of CPC following the judgment of Apex Court, the plaint shall not be rejected at the threshold, since such exercise of power will have drastic effect on the rights of the parties.

15. Hence, I find no ground to reject the plaint by exercising power under Order VII Rule 11(a)(d) of CPC though the order of trial court is cryptic.

16. In view of my foregoing discussion, and the findings recorded by this court, I find no ground to reject the plaint and consequently the petition is liable to be dismissed as it is devoid of merits.

17. In the result, the revision petition is dismissed, but in the circumstances of the case without costs affirming order in I.A.No.344 of 2011 in O.S.No.838 of 2007 dated 14.07.2011 passed by the III Additional District Judge, Ranga Reddy District at L.B.Nagar.

Miscellaneous petitions, if any, filed in this revision shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date: 10.07.2017
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THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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