

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.811 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful petitioners/ defendants, is directed against the order dated 02.09.2016, of the learned Junior Civil Judge, Nandikotkur, passed in I.A.No.432 of 2008 in O.S.No.216 of 2008.

2. I have heard the submissions of *Sri C.Prakash Reddy*, learned counsel appearing for the petitioners/ defendants ('the defendants', for brevity), and of *Sri S Venkata Subba Rao*, learned counsel appearing for the respondents/ plaintiffs 1, 3, 4 and 5 ('the plaintiffs', for brevity). I have perused the material record.

3. The preliminary facts, in a nutshell, are as follows:

The plaintiffs brought the suit against the defendants for perpetual injunction in respect of the lands situated at 80-Bannuru village limits, Jupadu Bunglow Mandal, more fully described in items 1 to 3 of the schedule annexed to the plaint. The 3<sup>rd</sup> defendant filed a written statement. The defendants are resisting the suit. While so, the defendants filed the afore-stated interlocutory application under Order VII Rule 11 of the Code of Civil Procedure, 1908, ('the Code') requesting to reject the plaint. The plaintiffs filed counter resisting the said application. On merits and by the order impugned, the trial Court dismissed the petition of the defendants. Therefore, the defendants are before this Court.

4. The case of the defendants as stated in the affidavit of the 1<sup>st</sup> defendant, in support of the afore-stated request, in brief, is as follows:-

‘The suit is filed for perpetual injunction. The defendants filed their pleadings and also the documents. Their case is that they are the owners of the plaint schedule lands and that the properties are ancestral properties. The averments that the subject land is divided amongst the sharers in a partition and that item no.1 fell to the share of the 1<sup>st</sup> plaintiff and item no.2 fell to the share of the 2<sup>nd</sup> plaintiff are false. The land belongs to the Government. No private party including the plaintiffs have any right much less absolute ownership rights or other rights over the said lands. Therefore, the plaintiffs have no right to file the suit against the defendants. There is no cause of action for the plaintiffs against the defendants insofar as the subject lands. The plaint is therefore liable to be rejected. The suit is misconceived. The 1<sup>st</sup> plaintiff already filed O.S.No.195 of 2008 on the file of the trial Court pertaining to item no.1 of the plaint schedule property, against one G.Lakshmaiah and obtained temporary injunction. The said suit is pending. In the said suit, he accepted that the suit land is a Svaijamor land and that the Tahasildar, Jupadu Bunglow granted D-Form patta to the defendant in that suit and that the 1<sup>st</sup> defendant filed an appeal against the said orders before the Revenue Divisional Officer, Kurnool, and that the said G.Lakshmaiah preferred an appeal before the Joint Collector, Kurnool, and the same is pending. The subject matter of the suit therefore has to be decided by the revenue Court and not a civil Court. Regarding the assigned lands, the orders of the quasi judicial authorities, revenue authorities shall prevail. The plaintiffs suppressed the facts to get over the legal hurdle. There is a legal bar with regard to maintainability of the suit before the civil Court and the civil Court is not having jurisdiction to entertain the suit in respect of

item no.1 of the plaint schedule property. There is also no specific cause of action for the plaintiffs to file the suit and the cause of action is invented. Hence, the whole plaint is liable to be rejected.'

5. The plaintiffs filed a counter denying all the allegations including the alleged admissions said to have been made in the former suit O.S.No.195 of 2008 filed against one G.Lakshmaiah. They reiterated in the counter the averments in the plaint of the present suit and also stated that they are having cause of action for filing the suit and that the present suit is entertainable by a civil Court and that the Civil Court has got jurisdiction to entertain the suit and grant the relief.

6. On merits and by the order impugned, the trial Court dismissed the petition of the defendants. Therefore, the defendants are before this Court.

7. Learned counsel for the defendants while reiterating the pleaded case of the defendants, which is extracted supra, would *inter alia* contend that for all the reasons stated by the defendants and for the particular reason that the lands are assigned lands even according to the version of the 1<sup>st</sup> plaintiff in the former suit and as the matter is seized of by the revenue authorities as the appeal filed by G.Lakshmaiah is pending before the Joint Collector, the revenue authorities only are competent to give a final judgment in the matter and that the civil Court is not having jurisdiction and that the cause of action is invented and that the suit is filed by misrepresenting and suppressing the facts and hence, the plaint is liable to be rejected.

8. Per contra, the learned counsel for the plaintiffs while supporting the orders of the Court below stated that at the time of consideration of

request for rejection of the plaint, the Court has to look into the plaint averments and not the defence and that a plain perusal of the plaint discloses that there are sufficient statements in the plaint and that it appears from the said statements that the suit is not barred by any law and that the said statement also discloses a cause of action and hence, the trial Court is justified in dismissing the petition of the defendants.

9. I have given earnest consideration to the facts and submissions. I have carefully perused the pleadings, copies of which are filed along with the material paper book.

10. I have carefully gone through the plaint. As per the provisions of Order VII Rule 11 of the Code, the plaint shall be rejected where it does not disclose a cause of action or where the suit appears from the statement in the plaint to be barred by any law.

11. Dealing first with the contention that there is no cause of action for the plaintiffs to file the suit, it is to be noted that as per the provision of law the suit cannot be dismissed on the ground of absence of cause of action as while considering a request for rejection of the plaint, the Court is required to see as to whether the plaint discloses the cause of action or not. Therefore, a plaint deserves to be rejected for non disclosure of a cause of action but not where there is no cause of action. Whether the cause of action pleaded in the plaint exists or not and whether such cause of action pleaded is true or not is a question of fact, which has to be adjudicated after full fledged trial. It is well settled that to ascertain as to whether the plaint discloses the cause of action or not the averments in the plaint are alone to be seen. A plain perusal of the plaint reflects that the plaintiffs specifically pleaded the facts constituting the cause of action and also mentioned the core

contentions constituting the cause of action, and, therefore, it is evident from the plaint that the plaint discloses cause of action. Hence, the contention of the defendants, which is untenable is liable for rejection. The said contention is accordingly rejected.

12. Before proceeding further, it is necessary to refer to the legal position.

In *United Insurance Co. v. C. R. Ramanatham*,<sup>1</sup> in paragraph 10 it is observed as under:

Under Order VII Rule 11 (d) a plaint must be rejected only if the averments therein explicitly disclose that the suit was barred by the provisions of any law, but not otherwise. The Court had no power to throw out the suit by rejecting the plaint at the threshold stage by examining and interpreting the provisions of law on which the suit is found. Neither the express language of clause (d) of Rule 11 nor its intent clothes the Court with such a power. The words “where the suit appears to be barred by any law” are qualified by “the statement in the plaint”. What is explicitly mentioned in the plaint, therefore, must alone be the basis for the exercise of power under Order VII Rule 11 (d), but not the conclusions that may be interpretatively drawn on an examination of the statutory provisions alluded to in the plaint. Where there was no such explicit statement in the plaint the question whether there was any legal barricade to the suit must be tried as an issue at the appropriate stage and that by this procedure alone the interests of both the parties to the suit could be safeguarded.”

In *Bhau Ram vs. Janak Singh and others*<sup>2</sup>, it is held by the Supreme Court as under:

“The law has been settled by this Court in various decisions that while considering an application under Order VII Rule 11 Code of Civil Procedure, the Court has to examine the averments in the plaint and the pleas taken by the Defendants

---

<sup>1</sup> 1989 (1) ALT 190

<sup>2</sup> AIR 2012 SC 3023

in its written statements would be irrelevant. [vide C. Natrajan v. Ashim Bai and Anr. (2007) 14 SCC 183, Ram Prakash Gupta v. Rajiv Kumar Gupta and Ors. (2007) 10 SCC 59, Hardesh Ores (P) Ltd. v. Hede and Co. (2007) 5 SCC 614, Mayar (H.K.) Ltd. and Ors. v. Owners & Parties, Vessel M.V. Fortune Express and Ors. (2006) 3 SCC 100, Sopan Sukhdeo Sable and Ors. v. Assistant Charity Commissioner and Ors. (2004) 3 SCC 137, Saleem Bhai and Ors. v. State of Maharashtra and Ors. (2003) 1 SCC 557]. The above view has been once again reiterated in the recent decision of this Court in The Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman v. M/s Ponniyamman Educational Trust represented by its Chairperson/Managing Trustee, JT 2012 (6) SC 149.”

13. It is necessary to refer to Order VII Rule 11 of the Code, which reads as follows:

11. Rejection of plaint.- The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;
- (b) 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;
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails comply with the provision of Rule 9.

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.

14. I have carefully gone through the plaint to examine as to whether on a careful and meaningful reading, the plaint discloses a cause of

action and whether the suit appears from the statement in the plaint to be barred by any law. On such a plain and careful reading of the plaint makes it manifest that the plaint contains necessary averments, which disclose the cause of action and that the suit is entertainable by a civil Court. When the Court is satisfied that the plaint discloses a cause of action, and it appears from the statement in the plaint that the suit is not barred by any law, the plaint can be rejected. Further, from the material averments in the plaint and the written statement, it is obvious that the rival contentions of the parties give rise to issues, which are mixed questions of fact and law, and therefore, the present contention of the defendants cannot be pre-judged. Further, the twin questions being essentially & respectively a question of fact and a mixed question of fact and law, the instant request of the defendants does not merit consideration.

15. Viewed thus, this Court finds that the revision petition is liable for dismissal.

16. Accordingly, this civil revision petition is dismissed.

No costs.

Miscellaneous petitions, if any, pending in this revision shall stand dismissed.

13<sup>th</sup> September, 2017  
RAR

---

M. SEETHARAMA MURTI, J