

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.1985 OF 2017

O R D E R

This civil revision petition under Article 227 of the Constitution arises out of the order dated 22.02.2017 passed by the learned III Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, in I.A.No.1186 of 2014 in O.S.No.825 of 2014. The said I.A. was filed by the first defendant in the suit, the first respondent herein, under Order 7 Rule 11(b) and (c) CPC seeking rejection of the plaint in O.S.No.825 of 2014. By the order under revision, the trial Court allowed the I.A. and ordered the plaintiff in the suit, the petitioner herein, to pay Court-fees of Rs.49,06,329/- under Section 39(e) of the Andhra Pradesh Court-Fees and Suits Valuation Act, 1956 (for brevity, 'the Act of 1956'), failing which the plaint stood rejected. The matter was adjourned for reporting compliance. Aggrieved thereby, the plaintiff is before this Court.

Parties shall hereinafter be referred to as arrayed in the suit.

O.S.No.825 of 2014 was filed with the following prayer:

'The plaintiff therefore prays that this Hon'ble Court may be pleased to pass a decree and judgment in his favour and against the defendants 1 to 6, 11 and 12.

a) Preliminary decree for partition of the plaint schedule property as per the ratios mentioned in the agreement of contract dated 22-4-1998 and shares by way of meets and bounds together with possession and for allotment of one such share (25% share in 1,74,361 square yards) to the plaintiff and defendants 1 to 6 as per their ratio mentioned in the agreement of contract dated 22-4-1998.

b) Restraining the defendants 1 to 6, 11 and 12 and their men from alienating the plaint scheduled property to third parties, entering into sale agreements, other agreements in favour of 3rd parties and also restraining them to alter the nature of the Plaint Scheduled Property.

c) To award costs of the suit and

d) To grant such other relief or relief's which this Hon'ble Court may deem fit and proper under in the circumstances of the case.'

In the affidavit filed in support of the subject I.A., the first defendant claimed that the plaintiff had resorted to clever drafting of the plaint by creating an illusion of a cause of action by camouflaging the relief of specific performance as a suit for partition in order to avoid payment of Court-fees for specific performance. He contended that if the plaint was read as a whole, along with the plaint documents, it would be manifestly clear that the plaintiff was seeking the relief of specific performance by styling the suit as a suit for partition. He stated that had the relief of specific performance been sought, the Court-fees would have come to Rs.49,06,426/- under Section 39(e) of the Act of 1956, but the plaintiff had only paid Court-fees of Rs.200/- by treating it as a suit for partition under Section 34(2) of the Act of 1956. He asserted that the agreement of contract dated 22.04.1998 clearly demonstrated that the plaintiff and the defendants were neither co-owners of the suit property nor did they have any pre-existing rights therein to claim partition. He further stated that the plaintiff was seeking specific performance in the name of partition as there would be no limitation applicable for seeking such partition, while the law of limitation would apply if he sought specific performance of the agreement of contract dated 22.04.1998. He therefore contended that the plaintiff was attempting to achieve indirectly what he could not achieve directly, as the time for seeking specific performance had already expired.

In his counter to the I.A., the plaintiff asserted that his prayer for partition, based on the agreement of contract dated 22.04.1998, was maintainable in law. He relied upon the terms of the said

agreement of contract to support his plea that he could seek partition on the strength thereof. He contended that the first defendant was only trying to procrastinate as he, along with defendants 5 and 6, were enjoying the suit property to his detriment. He claimed that the Court-fees paid by him treating the suit as one for partition was legal and valid. He accordingly prayed for dismissal of the I.A.

Perusal of the order under revision reflects that the trial Court accepted the plea of the first defendant that the plaintiff had styled the suit as one for partition only to avoid payment of Court-fees. The trial Court opined that the relief actually sought by the plaintiff was enforcement of the agreement of contract dated 22.04.1998 and he could not therefore be permitted to pay meagre Court-fees by treating the suit as one for partition. Upon considering the totality of facts and circumstances and more particularly, the agreement of contract dated 22.04.1998, the trial Court directed the plaintiff to pay necessary Court-fees under Section 39(e) of the Act of 1956, failing which the plaint was held liable to be rejected.

Heard Sri P.Rajesh Babu, learned counsel for the plaintiff, and Sri R.A.Achuthanand, learned counsel for the first defendant.

Perusal of the agreement of contract dated 22.04.1998, which forms the foundation for the litigation, manifests as under:

Defendants 5 to 10, being the parties of the first part, entered into the said contract with the plaintiff, the first defendant and three others, styled as parties of the second part. The parties of the first part, being the owners of the lands, detailed in the two schedules to the contract admeasuring over Ac.119.00 guntas in Kondapur Village of Serilingampally Mandal, Ranga Reddy District, were not in a position to pursue the land ceiling litigation with the State and

accordingly approached the parties of the second part to pursue the matter with the authorities so as to clear at least a part of the said land. The parties of the second part were to make efforts to follow up with all the concerned authorities and Courts at their own expense for clearance of at least an extent of Ac.16.00 guntas out of the land. Thereupon, 40% of the cleared land was to fall to the share of the parties of the first part, while the remaining 60% was to be shared by the parties of the second part. As and when the land was cleared, the parties of the first part were required to register 60% of the land cleared in favour of the parties of the second part within eight weeks from the date of the urban land ceiling clearance and in the event they failed to do so, the parties of the second part were given full power to approach a Court of law for specific performance against the parties of the first part and get the said 60% of the property registered through Court.

In the suit plaint, the plaintiff alleged that after making due efforts, the parties of the second part cleared an extent of Ac.36.01 guntas in Sy.Nos.208 and 209 of Kondapur Village and the same was released by the State in favour of defendants 5 and 6. He further claimed that defendants 5 and 6 colluded with the first defendant and executed a deed of conveyance in favour of the eleventh defendant firm, of which the first defendant was the Managing Partner. He asserted that he and defendants 1 to 6 were in joint and constructive possession of the suit property, but as they were trying to transfer part of the suit property to his detriment, the cause of action had arisen to seek partition of the suit property on the strength of the agreement of contract dated 22.04.1998.

Sri P.Rajesh Babu, learned counsel for the plaintiff, would contend that the trial Court misdirected itself in coming to the conclusion that the plaintiff was liable to pay Court-fees by treating the suit as one for specific performance under Section 39(e) of the Act of 1956. Learned counsel would argue that the first defendant filed an independent application in I.A.No.1187 of 2014 in O.S.No.825 of 2014 under Order 7 Rule 11(a) and (d) CPC and that the trial Court is yet to address the said application. He would argue that having kept the said application pending, the trial Court directed payment of monies towards Court-fees in the subject I.A. filed under Order 7 Rule 11(b) and (c) CPC, which is unsustainable in law.

Per contra, Sri R.A.Achuthanand, learned counsel for the first defendant, would contend that the trial Court was justified in looking into the issue of undervaluation of the suit by styling the relief of specific performance, which was actually sought, in the garb of a suit for partition. He would point out that the basic elements required for seeking partition were neither pleaded nor established on the strength of the plaint or the plaint documents and therefore, the trial Court rightly looked into the relief actually sought and accordingly directed payment of proper Court-fees.

It is relevant to note that the subject I.A. was filed under Order 7 Rule 11(b) and (c) CPC only. Another application filed by the first defendant under Order 7 Rule 11(a) and (d) CPC is yet to be considered by the trial Court. Order 7 Rule 11 CPC, to the extent relevant, reads as under:

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

(a);

(b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so 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 plaintiff 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);

(e);

(f)'

In so far as Clauses (b) and (c) of the aforestated provision are concerned, they operate in two separate and distinct areas. Under Clause (b), if the relief claimed is undervalued and the plaintiff fails to correct the valuation despite the trial Court requiring him to do so within the time fixed, the plaint is liable to be rejected. Under Clause (c), in the event the trial Court finds the relief claimed to have been properly valued, but the plaint is written upon paper insufficiently stamped and the plaintiff fails to supply the requisite stamp paper despite the trial Court requiring him to do so within a time frame, the plaint is liable to be rejected. Clause (b) therefore deals with a situation where the relief sought by the plaintiff is undervalued while Clause (c) deals with a situation where the relief sought is correctly valued but the Court-fees paid thereon is insufficient.

In the present case, the relief sought by the plaintiff was partition of the suit property based on his alleged joint possession over the same. The scope of enquiry, be it under Clause (b) or Clause (c) of Order 7 Rule 11 CPC, was only to see whether the relief of partition sought by the plaintiff was undervalued and if properly valued, whether the Court-fees paid thereon was sufficient.

However, the trial Court, basing upon the plea of the first defendant, went into the issue as to what should be the relief claimed by the plaintiff. Basing on this exercise, the trial Court decided that the relief sought by the plaintiff was in the nature of specific performance falling under Section 39(e) of the Act of 1956. This exercise undertaken by the trial Court, in the context of an application under Order 7 Rule 11(b) and (c) CPC, therefore went far beyond the scope of the said provisions. It was not for the trial Court to examine as to what ought to be the relief claimed by the plaintiff in an application filed under the aforesaid provisions. Taking the relief claimed at its face value, the trial Court could only have examined as to whether such relief had been undervalued and if so, direct proper valuation thereof under Clause (b) or if found to have been properly valued, examine whether the Court-fees paid thereon was sufficient, and if found to be otherwise, direct payment of the deficit Court-fees under Clause (c). The trial Court therefore completely misdirected itself in opening up the question as to what should be the relief that the plaintiff could ask for on the basis of the agreement of contract dated 22.04.1998 and determining the relief that should have been asked for by him on the strength thereof, thereby directing payment of Court-fees under Section 39(e) of the Act of 1956. Significantly, the prayer in the suit still remained as one for partition, but the Court-fees now required by the trial Court to be paid thereon relates to a suit for specific performance, which is not what was sought by the plaintiff. This disparity in the relief sought and the Court-fees directed to be paid thereon seems to have been completely overlooked by the trial Court.

Sri R.A.Achuthanand, learned counsel, placed reliance on ***ABDUL HAMID SHAMSI V/s. ABDUL MAJID***¹, wherein the Supreme Court observed that the plaintiff is allowed to give a tentative valuation when it is not possible to give an accurate valuation of the claim at the inception of the suit but the plaintiff cannot act arbitrarily and choose a ridiculous figure whimsically. The Supreme Court held that in such a case, it is not only open to the Court but its duty to reject such a valuation. This judgment does not advance the case of the first defendant as it arose out of a suit for accounts and, in any event, did not deal with the trial Court substituting the relief claimed by the plaintiff, as in the case on hand.

In ***M/s COMMERCIAL AVIATION AND TRAVEL COMPANY V/s. VIMLA PANNALAL***², the Supreme Court observed that where there are objective standards of valuation or, in other words, the plaintiff or the Court can reasonably value the relief correctly on certain definite and positive materials, the plaintiff cannot be permitted to put an arbitrary valuation *de hors* such objective standards or materials. It was further observed that the plaintiff cannot whimsically choose a ridiculous figure for filing a suit most arbitrarily where there are positive materials and/or objective standards of valuation of the relief appearing on the face of the plaint. Again, these observations were made in the context of a suit for accounts. Similarly, ***T.ARIVANDANDAM V/s. T.V.SATYAPAL***³ is also of no avail to the first defendant as that was a case relating to Order 7 Rule 11(a) CPC.

¹ (1988) 2 SCC 575

² (1988) 3 SCC 423

³ (1977) 4 SCC 467

Sri P.Rajesh Babu, learned counsel, would place reliance on ***KAMALA V/s. K.T.ESHWARA SA***⁴, wherein the Supreme Court pointed out that the different clauses in Order 7 Rule 11 should not be mixed up and where an application for rejection of the plaint is filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. In the case on hand, the trial Court completely lost sight of the scope of the provisions under which the application was filed, let alone rendering cogent findings thereon.

The order under revision is therefore unsustainable in law and is accordingly set aside. The I.A. is remanded for consideration afresh by the trial Court strictly in keeping with the provisions under which the I.A. was filed. The trial Court is at liberty to deal with I.A.No.1187 of 2014 filed in the suit under Order 7 Rule 11(a) and (d) CPC independently, uninfluenced by any of the observations made in this order.

The Civil Revision Petition is allowed to the extent indicated above. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

4th AUGUST, 2017

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⁴ AIR 2008 SC 3174