

THE HON'BLE SRI JUSTICE P.NAVEEN RAO
CIVIL REVISION PETITION No.1888 OF 2017

Dated :07-09-2017

Between:

Doniki Ravinder, s/o. Ilaiah, Aged 45 years,
Occu: Agriculture, r/o. Kantathmakur village,
Parkal Mandal, Warangal District and another.

.... Petitioners

And

Doniki Raja Lingam, s/o. Ilaiah, Aged 55 years,
Occu: Agriculture, r/o. Kantathmakur village,
Parkal Mandal, Warangal District, Telangana
State.

.... Respondent



This Court made the following :

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ORAL ORDER:

Heard learned counsel for petitioners and learned counsel for respondent.

2. Revision petitioners are defendants in O.S No. 104 of 2016 pending on the file of the Court of the Principal Junior Civil Judge, Parkal. For the sake of convenience, parties are referred to as they are arrayed before the trial Court.

3. Plaintiff filed suit for injunction. Plaintiff alleged that the defendants unsuccessfully tried to damage the water tank and teak plants standing in the suit schedule property on 1.8.2016 and on 15.8.2016 tried to dig trenches.

4. Defendants filed I.A.No.324 of 2016 under Order VII Rule 11 of CPC to reject the plaint for want of cause of action on the ground that the respondent/plaintiff is not in possession of the suit schedule property as on the date of filing of the suit. The said application is rejected by order under revision.

5. Defendants placed reliance on deposition given by the plaintiff whereunder he admitted that the suit schedule property was gifted to his daughter. It is therefore contended that in view of the said deposition, as plaintiff admitted that he is not the owner of the property, there is no cause of action to institute the suit and therefore plaint has to be rejected.

6. The trial Court observed that averments, particularly those made in paragraph V would show the cause of action for instituting the suit. For the purpose of consideration of the maintainability of the suit, the said averments are sufficient. The

trial Court observed that while considering an application under Order 7 Rule 11, averments in the plaint alone have to be taken into consideration and not the pleas raised by the defendants in their written statements or in the application filed for rejection of the plaint.

7. Learned counsel for petitioners contends that said decision of the trial Court is erroneous. When on the face of the admitted statement of the plaintiff it would disclose that plaintiff gifted the suit schedule property to his daughter even before the suit was instituted and thus by the time the suit was instituted he was not even in possession. Therefore, the question of dispossessing him after the suit was filed would not arise. Thus, the plaint ought to have been rejected based on the admitted factual position. The continuation of the suit is nothing but harassing and causing hardship to the defendants. On the admitted facts, suit cannot be proceeded further.

8. Learned counsel representing the plaintiff /respondent herein contended that the decision arrived at by the trial Court is in accordance with the mandate of Order VII Rule 11 and based on the principle of law laid down in catena of decision by the Supreme Court. He would contend that, what is required for maintainability of the suit is cause of action for instituting the suit based on the averments made in the plaint and not based on evidence recorded during the course of proceedings of the suit or based on the averments of defendants in their written statement. In support of his contentions, learned counsel placed reliance on decisions of the Supreme Court in **Mayar (H.K) Ltd and others Vs. Owners &**

Parties, Vessel M.V. Fortune Express and others¹ and Church of Christ Charitable Trust and Educational Charitable Society Vs Ponnamman Educational Trust².

9. As noted by the trial Court in paragraph V of the plaint, plaintiff stated that on 1.8.2016 defendants unsuccessfully tried to damage the water tank and teak plants and on 15.8.2016 defendants and their men unsuccessfully tried to dig trenches in the suit property with an objective to occupy the same. Based on this cause of action, plaintiff sought for permanent injunction restraining defendants and their agents, servants, workmen etc from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property in any manner.

10. Whether such a prayer can be granted to the plaintiff and whether the cause of action shown in the plaint to institute the suit was available to the plaintiff are the matters which require consideration by the trial Court after trial is completed and on consideration of the respective submissions.

11. The power vested in the trial Court under Order VII Rule 11 of CPC is an extraordinary power and is intended to throw-out the suits at the initial stage itself, if on a plain reading of the plaint averments, it does not disclose the existence of cause of action for instituting the suit and is a frivolous/vexatious litigation. At that stage, the Court cannot go into the merits of rival claims to reject the plaint. As noted by the trial Court and as seen from the copy of the plaint, the plaintiff has stated that on two dates mentioned therein, an attempt was made to encroach into the suit schedule property and to dispossess the plaintiff. The

¹ (2006) 3 SCC 100

² (2012) 8 SCC 706

said statement is sufficient for the trial Court to reject the plea of petitioners/defendants.

12. The scope of exercise of such power is delineated in several precedent decisions of the Supreme Court. In the two decisions relied by the learned counsel for respondent/plaintiff, the Supreme Court has held as under.

“12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the 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 a cause of action and if it does, then the plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order 7 Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants.” **(Mayur (H.K.) Ltd and others).**

“11. It is clear that in order to consider Order 7 Rule 11, the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinise the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been

reiterated in *Raptakos Brett & Co.Ltd. v. Ganesh Property* [(1998) 7 SCC 184] and *Mayar (H.K.) Ltd. V. Vessel M.V.Fortune Express* [(2006) 3 SCC 100]”. (**Church of Christ Charitable Trust and Educational Charitable Society**)

13. Having regard to the principle laid down by the Supreme Court in the above decisions, I do not see any perversity in the decision arrived at by the trial Court warranting interference. The revision fails and accordingly the same is dismissed.

Miscellaneous petitions if any pending in this civil revision petition shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date:07.09.2017
Tvk



THE HON'BLE SRI JUSTICE P.NAVEEN RAO



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