

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.No.322 of 2018

ORDER

This petition under Article 227 of the Constitution of India is filed challenging the order dated 09.11.2017 passed in I.A.No.180 of 2017 in O.S.No.298 of 2017 by the XXII Junior Civil Judge, City Civil Court, Hyderabad, dismissing the application filed under Order VII Rule 11(a) and (d) of CPC, by the petitioner/defendant.

2. The respondent/plaintiff filed suit for perpetual injunction restraining the petitioner/defendant from interfering with her possession over the car parking area in the suit property i.e., plaintiff's parking area, alleging that she purchased the parking area based on the letter issued by the promoter dated 05.08.2012 (original car parking allotment letter) and that the petitioner/defendant is allegedly interfering with her possession and enjoyment of said area.

3. The present petition is filed on two grounds. The first ground is that the cause of action disclosed in the plaint is not true and the second ground is that the claim of the respondent/plaintiff is barred by law under Order VII Rule 11(a) and (d) of C.P.C. The trial Court dismissed the petition assigning specific reasons holding that the suit is not barred by law and the petition is vexatious.

4. During hearing, learned counsel for petitioner reiterated the grounds urged in the petition while drawing the attention of this Court to Section 24 of Andhra Pradesh Apartments (Promotion of

Construction and Ownership) Act, 1987 (for short 'the Act') and the judgment of the Apex Court in **Nahalchand Laloochand Private Limited V. Panchali Cooperative Housing Society Limited**¹ and contended that when the promoter is not entitled to sell the common area, the allotment of parking area by letter dated 05.08.2012 is illegal and thereby, the respondent would not get any right under the said letter to enjoy the common area as parking place for the car and prayed to set aside the order by rejecting the plaint and allowing the petition.

5. The first and foremost ground urged before this Court is that the cause of action mentioned in the plaint is not true, but truth or otherwise in the cause of action cannot be decided at the threshold and the plaint cannot be rejected on that ground. The only ground available under Order VII Rule 11(a) and (d) of C.P.C., is that, if the plaint does not disclose any cause of action in the suit, the Court can reject the plaint. Then, what is cause of action is a question to be decided by the Court. The Apex Court in **Jageshwari Devi and others V. Shatrughan Ram**² has considered the scope of Order VII Rule 11(a) CPC i.e., non-disclosure of cause of action and the Apex Court concluded that if plaint does not disclose a cause of action which is a ground specified under Order 7 Rule 11(a) of CPC to reject the plaint. Further, the Apex Court held that there is a difference between the non-disclosure of a cause of action and defective 'cause of action': while the former comes within the scope of Order VII Rule 11, the latter is to be decided during trial of the suit.

¹ (2010) 9 SCC 536

² (2007) 15 SCC 52

In view of the law declared by the Apex Court in **Jageshwari Devi's** case, referred supra, it is clear that whether cause of action is real or not, is a question to be determined only the end of trial, but at the stage of considering the application under Order VII Rule 11(a) C.P.C., the Court has to notice the allegations made in the plaint, irrespective of the pleas raised in the written statement of the defendant and decide whether the allegations made in the plaint would disclose cause of action or not. If the plaint does not disclose cause of action, the Court is entitled to reject the plaint at the threshold, though the power of this Court is drastic, but the Court cannot decide whether the cause of action is real or not at the threshold and reject the plaint.

6. The second ground is that the claim of the respondent/plaintiff is barred by law. According to the allegations made in the plaint, the parking area was allotted to her by letter dated 05.08.2012, but whether such allotment is legal or not is a question to be decided only at the end of trial and that Section 24 of the Act and the law declared by the Apex Court in **Nahalchand's** case, referred supra, cannot be applied to the present facts of the case at this stage as there is a disputed question of fact with regard to allotment of car parking area by letter dated 05.08.2012. If the area allotted by letter dated 05.08.2012 is common area, then the bar under Section 24 of the Act and the law declared by the Apex Court in **Nahalchand's** case, referred supra, can be applied. But here, it is the contention of the respondent that she was allotted that same as parking area and not common area meant for use of occupants of the apartment.

Such dispute is a pure question of fact and at this stage, it cannot be decided while exercising power under Order VII Rule 11(a) and (d) of C.P.C. Therefore, none of the grounds raised before this Court are sufficient to reject the plaint by exercising power under Order VII Rule 11 (a) and (d) of CPC and the trial Court has rightly dismissed the petition and the order under challenge does not suffer from any legal infirmity warranting interference by this Court exercising power under Article 227 of the Constitution of India.

7. In the result, the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand dismissed.

24th January, 2018

sj



M. SATYANARAYANA MURTHY, J