

**THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN  
AND  
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

**APPEAL SUIT No.749 of 2017**

**JUDGMENT:** (per Hon'ble Sri Justice T.Amarnath Goud)

This appeal is filed under Section 96 of the Civil Procedure Code (for short, the Code) against the judgment and decree dated 28.04.2017 passed in I.A.No.90 of 2017 in O.S.No.1318 of 2016 on the file of the Court of the III Additional District Judge, Ranga Reddy District at L.B.Nagar (for short, Court below).

2. Heard Sri P.Veera Reddy, learned Senior Counsel appearing for Sri C.Praveen, learned counsel for the appellants and Sri Vedula Venkata Ramana, learned Senior Counsel appearing on behalf of Sri A.Venkatesh, learned counsel for respondent Nos.1 and 12.

3. The appellants herein are the plaintiffs who filed O.S.No.1318 of 2016 as against the respondents herein for partition and separate possession of the suit schedule properties and also for other reliefs, as under:

“(1). Judgment and Decree be passed for partition and separate possession of the suit schedule land in according to the 3/4<sup>th</sup> shares of the Plaintiffs, separate allotment of the Plaintiff share to an extent of 1 acre 16.5 gts out of 1 acre 36.5 guntas, to allot 20 guntas to Defendant No.2 from the 3/4<sup>th</sup> share of the Plaintiff and remaining extent of 1/4<sup>th</sup> share land to the Defendants 1, 11 & 12 separate allotment of Defendant No.1's land to an extent of 7 guntas and separate allotment of 13.05 guntas out of 25.5 guntas according to their shares in Sy.No.260 situated at Manchirevula Village, erstwhile

Rajendra Nagar Mandal, presently Gandipet Mandal,  
Ranga Reddy District;

(2). To pass preliminary decree according to the shares of the Plaintiffs and Defendants 1, 2, 11 & 12 in the suit land;

(3). To pass perpetual injunction in favour of the Plaintiffs in respect of suit land admeasuring Ac.2-22 gts situated at Manchirevula Village, erstwhile Rajendra Nagar Mandal, presently Gandipet Mandal, Ranga Reddy District from restraining the Defendants 5 to 12 from their illegal alienation, sale, mortgage and creating third party interest, by virtue of the documents;

(4). To declare the registered documents No.2099 of 1997, Doc.No.4802 of 2013, Doc.No.14054 of 2016 and Doc.No.14055 of 2016 in respect of the suit schedule land as null and void and not binding on the plaintiffs;

(5). To direct the concerned Revenue Authorities to rectify the pahanis from the year 1994-95 to 2015-16 in respect of suit schedule land;

(6). Cost of the proceedings be awarded.”

4. The averments in the plaint are as follows:

(a) Originally (i) Sri Ameer Shareef, (ii) Meera Shareef, (iii) Imam Shareef and (iv) Smt.Haleem Bee were the owners and possessors of agricultural land to an extent of land admeasuring Ac.2-22 guntas in Sy.No.260, situated at Manchirevula Village, erstwhile Rajendra Nagar Mandal, presently Gandipet Mandal, Ranga Reddy District, which is the suit schedule property. Insofar as the share of Ameer Shareef is concerned, he died leaving his son Khaja Shareef to succeed his share. Subsequently, Khaja Shareef also died leaving his wife viz.,

Fathima Bee (defendant No.1) and his 5 sons viz., Akram Shareef, Akbar Shareef, Afzal Shareef (defendant No.2), Azam Shareef and Afsar Shareef to succeed him. Insofar as the share of Meera Shareef is concerned, after his death, his daughter Modeen Bee has succeeded his share, and after her death, her son Syed Jani Hussain (plaintiff No.2) succeeded her. Insofar as the share of Smt.Haleem Bee is concerned, after her death, her son Ismail Shareef has succeeded her, and after his death, his son Ahmed Sharef Yousuf Shareef (plaintiff No.1) succeeded him. Insofar as Imam Shareef is concerned, he died issueless. Ahmed Sharef Yousuf Shareef, who succeeded the share of Haleem Bee and Syed Jani Hussain, who succeeded to the share of Meera Shareef have filed the above suit for partition and separate possession and for other reliefs, as stated above.

(b) The suit schedule land is Dastagar Dan Inam land. The aforesaid four owners viz., Sri Ameer Shareef, (ii) Meera Shareef, (iii) Imam Shareef and (iv) Smt.Haleem Bee were the joint owners and were having equal shares and rights over the property. It was stated by the plaintiffs in the plaint that they reliably learnt that in the year 1984, Khaja Shareef, Jahangir Shareef, Yaseen Shareef and Ahmed Shareef, obtained loan from one Sri Tolaram, who is the father of defendant Nos.3 and 4, and executed a debt note in his favour. The said Tolaram, by taking undue advantage of the innocence of the said land owners, converted the debt note into an agreement of sale in respect of the suit schedule land and filed O.S.No.382 of 1987 on the file of

the Court of Principal Subordinate Judge, Ranga Reddy District and obtained a decree in his favour. Subsequent to the decree, said Tolaram got mutated his name in the revenue records, under proceedings No.D/FOR/3842/1989, dated 31.05.1990, without putting the plaintiffs and others on notice. He also obtained pattadar passbooks and title deeds. After the death of Mr.Tolaram, defendant Nos.3 and 4 executed registered sale deed dated 31.07.1997 vide document No.2099/1999 in favour of defendant No.5 in respect of suit schedule land. In turn, defendant No.5 alienated an extent of land admeasuring Ac.0-07 guntas to defendant No.11 under a registered sale deed dated 04.07.2013 vide document No.4802 of 2013 and also transferred Ac.1-30 guntas in favour of his family members i.e., defendant Nos.6 to 10 by way of a registered gift settlement deed dated 24.10.2016 vide document No.14054 of 2016. Thereafter, defendant Nos.6 to 10 created a registered exchange deed dated 24.10.2016 vide document No.14055 of 2016 in favour of defendant No.12.

(c) Defendant No.5 proposed to sell the land covered under the registered sale deed No.2099 of 1997 to the prospective purchasers. Accordingly, a public notice was published in the newspaper on 18.10.2016 for sale of Ac.1-30 guntas. By seeing the public notice, the legal heirs of the original owner i.e., Ameer Shareef, came to know about the fraud played by late Tolaram and accordingly, they have issued a legal notice on 20.10.2006.



Thereafter, the plaintiffs, after obtaining the certified copies of the documents, filed the aforesaid suit.

4. Defendant No.12 in the suit filed I.A.No.90 of 2017 under Order VII Rule 11 read with Section 151 of the Code seeking to reject the plaint on three grounds, namely (i) that the suit is barred by law, (ii) that the valuation is improper and (iii) that no cause of action is disclosed.

5. The Court below came to the conclusion that the plaint did not disclose a cause of action and accordingly, by the impugned judgment and decree dated 18.04.2017, allowed I.A.No.90 of 2017 by rejecting the plaint, which necessitated the plaintiffs to file the present appeal.

6. It is needless to mention that a plaint can be rejected under Order VII Rule 11 of the Code, only if the conditions stipulated therein are satisfied. Clauses (a) to (f) of Rule 11 of Order VIII indicate the parameters on which a plaint can be rejected.

7. In the case on hand, the 12<sup>th</sup> defendant, who was a third party purchaser, moved an application for rejection of plaint on three grounds, but ultimately the focus got confined to the absence of a cause of action. The contention of the 12<sup>th</sup> defendant was that the plaint proceeded on a wrong understanding as though the properties inherited by the members of a Muslim family constituted a coparcenary property. The concepts of joint family and coparcenary are unknown to

Muslim Law, and that therefore, the entire plaint, which proceeded on the basis of existence of a joint family and coparcenery, was completely fallacious, when the parties to the litigation were Muslims.

8. It is true that in paragraph-III.2 of the plaint, the plaintiffs made a very strange statement that the names contained in the genealogy tree were that of coparceners. But the said statement, by itself will not make the plaint liable to be rejected.

9. One of the cardinal principles of law for the rejection of the plaint is that the plaint should be read as a whole. Cause of action, as repeatedly held by the Apex court, is a bundle of facts and the Court can reject the plaint only if no cause of action is disclosed on a meaningful reading of the plaint in entirety. One of us (VRS,J) had an occasion to consider the correctness of a judgment rejecting a plaint in a suit for partition, at the instance of a third party purchaser, in **Mustigulla @ Namaswamy Hemanth Kumar v. Abhaya Infrastructures Private Limited**<sup>1</sup>. Since that case was also a case where a third party purchaser sought rejection of plaint in a suit for partition, a few portions of the said judgment may be usefully extracted as follows:

“As pointed out by Supreme Court in **Sopan Sukhdeo Sable and others v. Assistant Charity Commissioner and others 2004 3 SCC 137** the trial Court, while dealing with an application under Order VII Rule 11, must remember that if on a meaningful and not formal reading of the plaint, the claim is manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, the trial Court could invoke Order VII Rule 11 (a).

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<sup>1</sup> 2016 (6) ALT 244

As pointed out by the Supreme Court in **John Kennedy and another v. Ranjana and others, 2014 15 SCC 785** a suit for partition cannot be dismissed as vexatious on the ground that the suit property was self-acquired property.

It must be remembered that the power conferred under Order VII Rule 11, as held by the Supreme Court in **P.V. Guru Raj Reddy and another v. P. Neeradha Reddy and another, 2015 8 SCC 331** is a drastic power. Therefore, the conditions precedent for the exercise of power are stringent. As a consequence, the averments contained in the plaint have to be read as a whole to find out whether it discloses a cause of action or whether a suit is barred by any law.”

10. Keeping in mind, the principles of law enunciated in the above decision, if we have a look at the plaint it shows that according to the plaintiffs, four persons by name Ameer Shareef, Meera Shareef, Imam Shareef and Smt. Haleem Bee were pattedars, owners and possessors of the agricultural land in Sy.No.260, admeasuring Ac.2.22 gts., situated at Manchirevula Village, erstwhile Rajendranagar Mandal, presently Gandipet Mandal, Ranga Reddy District. According to the plaint, the classification of the land was Dastagar Dan Inam.

11. As rightly contended by Mr. Vedula Venkata Ramana, learned Senior Counsel appearing for the 1<sup>st</sup> respondent/12<sup>th</sup> defendant, a suit for partition can be maintained by persons, who claim to have jointly inherited a property from a common ancestor or who claim to have purchased the property jointly. But according to the learned Senior Counsel, neither of these conditions could be culled out from the plaint and hence the rejection of the plaint was correct.

12. In order to appreciate the above contention, it may be useful to extract para-III.2 of the plaint, which reads as follows:

III. The plaintiff submits as follows:

2. It is submitted that originally (1) Sri Ameer Shareef, (2) Meera Shareef, (3) Imam Shareef and 4\_) Smt. Haleem Bee were the Pattedars, owners and possessors of agricultural land in Survey No.260, admeasuring 2 acres 22 guntas, situated at Manchirevula Village, Erstwhile Rajendranagar Mandal, presently Gandipet Mandal, Ranga Reddy District. The classification of the said land is Dastagar Dan Inam. The above named ancestors were having equal share i.e., Ac.25.5 guntas each out of 2 acres 22 guntas in Survey No.260 of Manchirevula Village, which is hereinafter referred as Suit Schedule Property.”

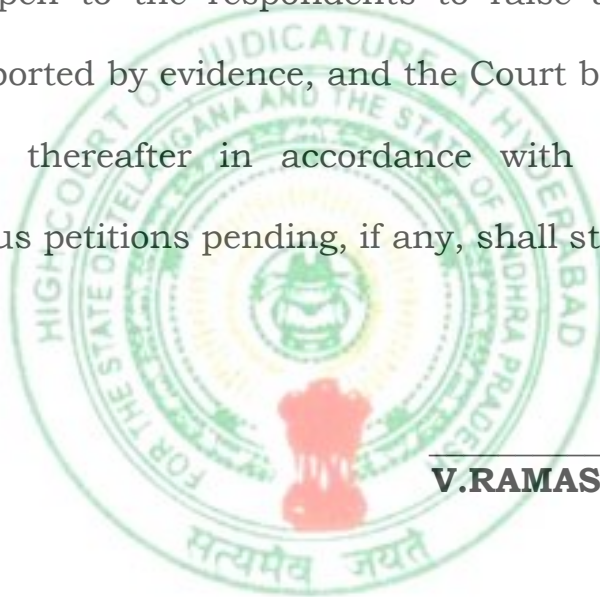
13. Though it is not claimed in the portion of the plaint extracted above that the parties to the litigation inherited the suit property from a common ancestor, it is the definite case of the plaintiffs that four persons, viz., Ameer Shareef, Meera Shareef, Imam Shareef and Smt. Haleem Bee jointly owned and possessed the suit schedule property. The plaintiffs claimed to have inherited the property from two out of the four joint owners. Therefore, this is not a case where the plaintiff had no cause of action.

14. At the stage of adjudicating a plaint under Order VII Rule 11, it is not open to the Court to find out whether those four persons, viz., Ameer Shareef, Meera Shareef, Imam Shareef and Smt. Haleem Bee jointly owned and possessed the suit property or not. The only question that the Court should pose to itself is whether the plaintiffs have a cause of action, even if all the averments contained in the plaint are taken to be a gospel truth.



15. In the light of the specific averments as to how they became the persons entitled to the suit property, it cannot be said that the plaint did not disclose a cause of action. But unfortunately, the Court below proceeded on an erroneous basis and rejected the plaint. Hence the judgment of the trial Court cannot be sustained.

16. In view of the above, the appeal is allowed and the judgment and decree of the Court below are set aside. The suit is remanded back to the Court below for fresh disposal on merits. It will be open to the respondents to raise all the issues on merits, supported by evidence, and the Court below may dispose of the suit thereafter in accordance with law. No costs. Miscellaneous petitions pending, if any, shall stand closed.



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**V.RAMASUBRAMANIAN, J**

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**T.AMARNATH GOUD, J**

Date: 16-03-2018  
TJMR