

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

CRP No. 5520 of 2008

ORDER:

This revision petition is filed against the order dated 22.07.2008 in IA.No.1040 of 2005 in OS.No.297 of 2005 passed by II Additional Senior Civil Judge, Visakhapatnam.

The suit OS.No.297 of 2005 is filed by Smt. B.Vijaya Lakshmi and B.Krishna Rao against K.Chinna Babu and five others for specific performance of oral agreement of sale dated 21.08.1993 and for alternative reliefs. The defendants have filed a written statement denying the plaint allegations and raising various defences both on merits and on the maintainability of the suit etc. In addition to the differences raised, the plaintiffs have also filed IA.No.1040 of 2005 under the provisions of Order VII, Rule 11 of CPC asking the Court below to reject the plaint on various grounds that are stated in the affidavit. The respondents filed a counter denying the affidavit averments and stating that the issues raised are matters to be decided after full trial and can never be decided in interlocutory applications. The matter was heard by the learned II Additional Senior Civil Judge and ultimately by an order dated 22.07.2008 the application for rejection of plaint was dismissed. The learned Judge held that in view of the decisions cited and the nature of the suit, the rejection of the plaint at that stage was not correct and that the matters

raised should be decided after taking evidence. It is this order that is now assailed in the present appeal.

This Court has heard Sri B.Prayaga Murthy and Sri G.Ananda Rao for the petitioners and Sri Yogesh Kumar Heroor for the respondents.

The learned counsel for the petitioners vehemently argued that the lower Court committed a serious error in rejecting the application. He argued that the plaint does not disclose a cause of action at all and that despite the matter being brought to the notice of the lower Court, the lower Court rejected his application. The learned counsel argued that an examination of the plaint clearly points to the fact that there is no cause of action at all for the suit and that basing on a created, fictitious cause of action, which is not borne out by record; he argues that the plaint is filed to harass his clients. He also argued that he has pointed out the defects in the plaint including the lack of cause of action in his written statement and that an *ex-facie* reading of the plaint makes it clear that a fraudulent and created cause of action is pressed into access without any basis and because of this vexatious plaint, his clients are compelled to defend the suit. He argued that the plaint is a clear and plain abuse of process of Court. He relied upon the judgments reported in ***Pratibha and another v. Vedvathi and another***¹ and relied

¹ 2007 (5) ALT 615

upon para 13 of the said judgment which is reproduced below:

"13. The real object of Order VII Rule 11 of CPC is to keep out of Courts irresponsible law suits. Therefore, the Order 10 of the Code is a tool in the hands of the Courts by resorting to which and by searching examination of the party in case the Court is prima facie of the view that the suit is an abuse of the process of the Court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order VII Rule 11 of the Code can be exercised."

He also cited **Soumik Sil v. Subhas Chandra Sil**² and argued that if the plaint does not disclose cause of action, it could be rejected under Order VII Rule 11 9 of CPC. It is the case of the learned counsel that the plaint does not disclose a cause of action.

He states that there is no agreement at all and no notice for specific performance also and that the claim is barred by time. Learned counsel also points out that the suit was returned when the plaint was filed and that the lower Court itself took the objection that proof of payment is not filed and the proof of demand for specific performance is also notified. This return dated 17.03.2005 was replied by the advocate for the plaintiffs on 18.03.2005, who stated that these are matters of evidence to be decided in a suit. The demand for specific performance according to the endorsement is also oral. Based on this, the learned counsel for the revision

² AIR 2014 SC 1931

petitioners argued that the entire case set up is false and that there is no cause of action at all for this suit.

In reply thereto, the learned counsel argued that as per the settled law on this subject, the provisions of Order VII, Rule 11 of CPC cannot be used to reject a plaint, summarily where a cause of action is disclosed. He drew the attention of this Court to the plaint that is filed in the lower Court and pointed out that his clients have made a clear averment in the plaint about the manner in which the agreement was concluded. The learned counsel pointed out in para 3(d) of the plaint that they have very specifically stated that after due negotiations, defendants 1 to 5 agreed to sell Acs.1.05 cents of land for consideration of Rs.1,80,000/-. The date of the agreement for the said agreement was given as 21.08.1993. He also pointed out that the negotiations that took place in the presence of two gentlemen who were named in the plaint. The advance was also paid according to the plaint averments on 21.08.1993. He also pointed out that possession of the property was given to the plaintiffs on 21.08.1993 and that the original sale deed dated 13.04.1976 was also handed over to them. The subsequent pleading which was pointed out was to the effect that despite the requests, the sale deed was not executed.

It is the contention of the learned counsel for the respondents that as per settled law on this subject only, the plaint averments only are to be taken into consideration for

deciding an application under Order VII Rule 11 of CPC and that he also argued that there is no prohibition in law for an oral agreement and that an oral agreement is also enforceable contract. Therefore, it is his argument that the plaint discloses a clear cause of action. He also argued that the limitation aspect that is raised is a mixed question of fact and law and that in a suit for specific performance, the limitation begins on the date of denial of the right and therefore, the learned counsel argued that the application filed under Order VII Rule 11 of CPC was rightly rejected.

This Court, on an examination of the facts and after hearing the submission of the learned counsel and considering the law on this subject, is of the opinion that the plaint in this case discloses a sufficient cause of action. As per the settled law on the subject which is too numerous to be cited, a reading of typed plaint averments alone must show that the plaint can be rejected. Two examples of this settled law are the cases reported in **India Household and Healthcare Ltd. V. LG Household and Healthcare Ltd.**³ and **Sopan Sukhdeo Sable and Ors. Vs. Assistant Charity Commissioner and Ors.**⁴. A reading of the plaint discloses that the plaintiffs have pleaded that the agreement was concluded on 21.08.1993 and that the advance of Rs.10,000/- was given on 21.08.1993 in the presence of two persons named in the plaint. Possession of

³ 2005(7) SCC 510

⁴ 2004 (3) SCC 137

the property was also given as per the plaint averments on 21.08.1993 pursuant to the said oral agreement. In para 3, it is clearly pleaded that in March 2005, disputes clearly arose between the parties and that only in March 2005, the defendants refused to execute the sale deed. Viewed from this angle the suit is in time as per the averments. This Court is of the opinion that for the purpose of this Order VII Rule 11 CPC, application and for the decision thereon, sufficient material has been placed by the plaintiffs to show that there is a “cause of action” for the suit. The date of the agreement is furnished, the details of the payment and the names of the persons who are said to be witnesses are furnished. Thus a cause of action is made out. It is however made clear that this Court is not expressing any opinion on the correctness or otherwise of the oral agreement of sale and the denial in March 2005. This Court, on an examination of the averments in the plaint, is of the opinion that the plaint discloses a cause of action and if the denial of specific performance in March 2005 is the cause of action for the suit, then an ex-facie reading of the plaint does not lead to a conclusion that the plaint is barred by time.

For all these reasons, this Court holds that a reading of the plaint does not show that the suit is an abuse of process of Court or that it is a bogus litigation.

Therefore, this Court is of the opinion that the order passed by the lower Court rejecting the application filed

under Order VII Rule 11 of CPC is correct and that there are no infirmities in the same warranting interference by this Court.

In the result, the Civil Revision Petition is dismissed. It is made it clear that the opinions expressed by this Court in this order should not in any way influence the lower Court in deciding the matter on merits. As the suit is of the year 2005, the lower Court is directed to proceed with the trial of the suit on a priority and not grant liberal adjournments. No order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

Date: 20.04.2018
KLP

D.V.S.S. SOMAYAJULU, J

