

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.3919 OF 2017

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.364 of 2016 in O.S.No.79 of 2016 dated 24.04.2017 passed by the I Additional District Judge, Kurnool, dismissing a petition filed under Order 1 Rule 11 (a)(b) &(d) of C.P.C.

The petitioners herein are the defendants in O.S.No.79 of 2016, filed I.A.No.364 of 2016 alleging that the alleged joint possession of the plaintiffs over the suit schedule property is a myth and the plaintiffs should have paid court fee under Section 34(1) of the APCF & SV Act, but not under Section 34(2); that the suit is under valued, as such plaint is liable to be rejected and that when there is no express demand for partition of the properties, the word 'dodging' does not mean refusal of the demand by defendants 1 to 4 and it means there is no cause of action for the suit. Further, when there is no pre-existing rights for the plaintiff, D-5 and D-6, in the properties of Mr. Chand Basha, in view of partition already taken place between Mr. Chand Basha and his brothers, the plaintiff should have sought for the recovery of possession because he is not deemed to be in joint possession of the property and as such, the plaint is liable to be rejected Order 1 Rule 11 (a)(b) &(d) of C.P.C.

The first respondent/plaintiff filed counter, denying material allegations, *inter alia*, contending that the suit was valued properly and the Court fee paid thereon under Section 34(2) is based on the pleadings in the plaint. Therefore, the Court fee is paid in

accordance with law. The respondents though asked for partition of the property, the respondents dodged on one pretext or the other and this allegation is sufficient to conclude that the petitioners/defendants declined the partition the schedule property and as such, there is a cause of action for filing the suit.

Finally, it is contended that, in the instance of death of Mr. Chand Basha, all the sharers who are entitled for share are deemed to be in possession of the property jointly and so payment of Court Fee under Section 34(2) is proper and correct and that the allegations made in the plaint that the death of Mr. Chand basha gave rise to claim share in the property and the suit is not barred by any law to attract Order 1 Rule 11 (a)(b) &(d) of C.P.C. and prayed the Court below to dismiss I.A.No.364 of 2016.

Based on the pleadings, the Court below framed sole point for consideration, and upon hearing argument of both the counsel, the Court below dismissed I.A.No.364 of 2016 holding that the Court Fee paid under Section 34(2) is in accordance with law, in view of the allegations made in the plaint and that, there is cause of action for the suit and the plaintiffs/respondents asked for the partition, but the petitioners herein dodged to partition the property and the suit is not barred by any law.

Aggrieved by the order passed by the Court below in I.A.No.364 of 2016, the present civil revision petition is preferred, mainly on the ground that the Court below failed to advert to the written arguments, the petitioners specifically referred to judgment of the Apex Court, wherein the Court below did not verify the plaint whether it gave rise any cause of action for filing suit against D-1

to D-4 and based on the bare allegations made in the plaint, accepted the contentions that the Court Fee paid is correct.

It is also contended that, the averments in the plaint are silent with regard to demand for partition by the respondents to the defendants 1 to 4 and without disclosing the dates of such request or demand of partition and refusal by D-1 to D-4, the petitioners herein, except using the word 'dodging' in paragraph 5 of the plaint, nothing is averred in the plaint about demand made by the respondents for partition of the property by D-1 & D-2. It does not mean that demand was made for partition. Similarly, in paragraph 5 of the affidavit, it is asserted that the plaintiffs asked the defendants for partition of the property and it is not a substitute for the word 'demand'. Therefore, the Court below did not consider the specific contentions urged in the petition and committed an error in dismissing I.A.No.364 of 2016.

Learned counsel for the petitioners drawn attention of this Court to several judgments in the revision petition itself, as if it is a writ petition filed under Article 227 of the Constitution of India, based on those principles, learned counsel for the petitioner contended that, when the plaint did not disclose cause of action, the plaint shall be rejected by exercising power under Order VII Rule 11 (a) of C.P.C and similarly, when the suit is undervalued, and sufficient Court fee is not paid, the plaint shall be rejected by exercising power under Order VII Rule 11(b) C.P.C. Finally, it is contended that the plaint is barred by law and it shall be rejected under clause (d) of Order VII Rule 11 C.P.C, since, there is no averment in the plaint that the deceased Mr. Chand Basha died intestate.

*So, the case of the respondent is not a case of intestate succession, only in case of intestate succession, the provision of Muslim Personal Law (Shariyat Act, 1937) would apply as per Section 2 of the said Act, otherwise, that is to be governed under the Indian Succession Act, so the plaint has to be rejected on this ground also by placing reliance on **Deepak v. Raj, Md. Khan v. Ratnam**.* Learned counsel for the petitioner also calculated the shares to point that the claim made by the respondents is illegal and prayed to set-aside the order passed by the Court below, allowing I.A.No.364 of 2016 in O.S.No.79 of 2016.

During hearing, learned counsel for the petitioner made a strenuous effort to establish that there is no cause of action for the suit, since, there was no demand which is the basis for filing a suit by the Muslim against the sharers and placed reliance on several judgments, which will be referred at appropriate stage. In the absence of any demand, specifically raising plea in the plaint, no cause of action would arise and therefore, the suit itself is liable to be rejected on the ground that the plaint did not disclose cause of action by exercising power under Order VII rule 11(a) C.P.C. But, the Court below did not consider this contention in proper perspective and committed an error.

Learned counsel for the petitioner also contended that the plaintiff was in possession and enjoyment of the property and when Mr. Chand basha died intestate, after partition of the property with his brothers, the petitioners are not deemed to be in joint possession of the property and thereby, the Court fee shall be paid under Section 34(1), but not under Section 34(2). Even if the allegations made in the plaint are taken on its face value, the

respondents are not in joint possession of the property, thereby, the suit is undervalued and paid insufficient Court fee of Rs.200/-. Hence, the plaint shall be rejected by exercising Clause (b) of Order VII Rule 11 C.P.C, but the Court below did not consider this objection in proper perspective and committed an error.

Finally, it is contended that the suit is barred by law as the petitioner is governed by Indian Succession Act, since, Mr. Chand Basha died intestate and Shariat Law has no application governing the succession of a Muslim, who died intestate. Thereby, the suit is barred by law and sought to reject the plaint at the threshold, by exercising power under Order VII Rule 11 (d) C.P.C.

Considering rival contentions and perusing the material available on record, the points that arise for consideration are as follows:

- 1. Whether the suit is under-valued and the Court fee paid thereon is insufficient. If so, whether the plaint be rejected by exercising power under Clause (b) Rule 11 Order VII C.P.C?***
- 2. Whether the plaint disclosed cause of action for the suit for partition in the absence of demand by the plaintiff and denial by the petitioners herein. If not, whether the plaint shall be rejected by exercising power under Order VII Rule 11-A C.P.C?***
- 3. whether the suit claim is barred by any law and liable to be rejected by exercising power under Order VII Rule 11-A C.P.C?***

P O I N T No.1:

The first and foremost contention raised by the learned counsel for the petitioner is that, the suit claim is undervalued and the plaintiffs are not in joint possession of the property along with the defendants, since, Mr. Chand Basha and his brothers partitioned the property, in such case the Court fee shall be paid under Section 34(1), but not under Section 34(2), valuing the suit properly. But, the Trial court did not accept this contention on the ground that the suit is valued properly based on the allegations made in the plaint and determined the Court fee payable on the plaint and declined to reject the plaint filed under Order VII Rule 11 (b) C.P.C.

In view of the specific contention, it is relevant to advert to the allegations made in the plaint to find out whether the allegation that they are in joint possession of the property or not and the Court fee paid is sufficient and valued the claim appropriately.

The copy of the plaint is placed on record and the allegations in the plaint disclosed that late Hakeem Abdul purchased several properties and was in possession and enjoyment of the same till he passed away, leaving behind his four sons (plaintiff, husband of first defendant, defendants 5 & 6), three daughters and wife of his predeceased son namely H. Jahangeer. Hence, being the legal heir of the said late Hakeem Abdul Gaffar, all of them partitioned the properties among themselves on 27.08.1993 vide Registered Partition Deed No.5336/1993. In the partition, first defendant's husband namely M. Chand Basha got the properties mentioned in 'A' schedule of the said partition deed. So also plaintiff and

defendant nos.5 & 6 got the properties mentioned in Schedules 'C', 'D' & 'E' respectively and the said M. Chand Basha was in possession and enjoyment of his share of the properties viz. Item No.1 to Item No.4 and an extent of Ac.2-87 gts in Item No.5 of the plaint schedule. Besides, the said property, he also acquired properties on his own of an extent of Ac.2-00 cents described in Item No.5 and Item No.6 of plaint schedule. Hence, the said M. Chand Basha is the absolute owner of the plaint schedule property and he was in possession, till he died on 04.06.2015.

Further, it is stated in the affidavit that, after the death of the said M. Chand Basha, his wife, daughters (D-1 to D-4) and brothers (plaintiff and defendant nos.5 & 6) have inherited the said property which is now in their joint possession. Hence, as per Muslim personal law, being the widow of the deceased first defendant is entitled to $1/8^{\text{th}}$ share in his property, remaining $7/8^{\text{th}}$ share defendant Nos. 2 to 4 are entitled to $2/3^{\text{rd}}$ of it, since the deceased has no male child. Similarly, plaintiff, defendant nos. 5 & 6 being the brothers/collaterals of the deceased are jointly entitled to the left over $1/3^{\text{rd}}$ share. Accordingly, plaintiff, defendant Nos. 5 & 6 are each entitled for $7/72^{\text{nd}}$ joint share, defendant no.1 is entitled for $9/72^{\text{nd}}$ joint share and defendant nos. 2 to 4 are each entitled for $16/72^{\text{nd}}$ joint share in the plaint schedule properties. Further, the plaintiff and defendant nos. 5 & 6 valued the suit at Rs.36,38,444/- and paid fixed Court fee at Rs.200/- under Section 34(2) of the Act, alleging that the plaintiff and defendants 5 & 6 are in joint possession of the schedule property, making clear assertion in paragraph 5 of the plaint.

When a suit is filed for partition, the allegations made in the plaint alone shall be taken into consideration to determine the Court fee payable on the plaint. The allegations made in the written statement and any applications filed during pendency of the suit are irrelevant.

Even otherwise, Order VII Rule 11 C.P.C deals with Rejection of plaint and according to it, the plaint shall be rejected in the following cases:

- (a) Where it does not disclose a cause of action;
- (b) Where the relief claimed is undervalued, 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;
- (c) Where the relief claimed is properly valued, but the plaint 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) Where the suit appears from the statement in the plaint to be barred by any law :

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

Thus, it is clear from Clause (b) of Order VII Rule 11 C.P.C that, for undervalued claim by 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. But, on the ground that the Court

fee paid in the plaint is not correct and the plaint shall be rejected by exercising power under Order VII Rule 11 (b) C.P.C.

Even assuming for a moment that duty is cast on the Court to determine the value of suit, when the relief is undervalued, the Court may determine the value of the suit based on material brought on record and fix valuation of the suit and directed to deposit Court fee be made good within the specified time and if, it is not made good, then the Court can pass orders. But, in the present case, no such question arises as ton today, as the Court did not undertake the exercise of fixing valuation of the suit, directing to make good the deficit Court fee by the plaintiff. Hence, it is not a ground to reject the plaint.

The other specific contention raised by the learned counsel for the petitioners is that, plaint is liable to be rejected under Order VII Rule 11 (b) C.P.C, as the plaint averment discloses that, late Hakeem Abdul Gaffar (father of the plaintiff and defendants No.5 & 6) had four sons and three daughters. One son by name H. Jahangeer died during the life time of late Hakeem Adul Gaffar. The legal heirs of late Hakeem Abdul Gaffar are deceased H. Chand Basha, late H. Jahangir, plaintiff, defendant Nos. 5 & 6 and three daughters who are not made as parties to the suit. Being the legal heirs of said late Hakeem Abdul Gaffar on 27.08.1993 all of them partitioned the properties among themselves vide Registered Partition Deed No.5336/1993. In view of execution of Registered Partition Deed, the plaintiff was excluded from joint possession of the suit scheduled properties and no reunion is averred in the plaint. As the plaintiff has his own family and deceased H. Chand Basha has his own family there is no right of

survivorship to the plaintiff, although plaintiff averments contains the express words that the plaintiff is in the joint possession of the properties along with defendants 1 to 4, the substance of the plaintiff averments discloses that plaintiff has been excluded from joint possession by way of registered partition deed vide No.5336/1993 dated 27.08.1993. Therefore, when the plaintiff is out of possession, the payment of Court Fee under Section 34(2) of APCF & SV Act is an illegality. In the absence of reunion, the Court Fee paid on the plaintiff is not correct and on this ground also, the Court shall reject the plaintiff.

Sri T. Kumar Babu, learned counsel for the petitioners contended that, there was no reunion and drawn attention of this Court to the meaning given for word 'coparcenary' in P. Ramanath Aiyar's Law Lexicon as follows:

"Co-parcenary = land is held in coparcenary where there is unity of title, possession and interest.

Coparcenary is a narrower body than a joint family and consists of only those who have taken, by birth an interest in the property of the holder for the time being and who can enforce a partition whenever they like (vide **Satyaprema Manjunatha Gowda v. Controller of Estate duty, Karnataka¹** and **Sk.Md.Zafir v. Sk. Amiruddin and others²**)

Strictly speaking, There was no joint family and coparcenary in Mahomedan law and no pre-existing rights to plaintiff to claim rights in the coparcenary property. Creation of new rights is

¹ 1997 (10) SCC 684

² AIR 1963 Patna 108

different from pre-existing rights (vide **Shub Karan Bubna alias Sub Karan Prasad Bubna v. Sita Saran Bubna and others**³).

Learned counsel for the petitioners further drawn attention of this Court to the judgment of Rangoon High Court in **Maung Ba Tu v. Ma Thet Su & others**⁴, judgment of this Court in **Mohammad Raza khan v. Saheb Raza Khan and others**⁵, **K.S. Venkatasami Naidu v. K.J. Ramappa Naidu**⁶, **Dwarampudi Veramma v. Kennala Dharama Reddy**⁷ and judgments of Delhi High Court in **Suresh Kapoor v. Shashi Kiran Lal Khanna & ors**⁸ and basing on the principles laid down in the above judgments, learned counsel for the petitioners contended that the suit was under-valued and Court Fee has to paid under Section 34(1), but not under Section 34(2) under APCF & SV Act and contended that there are errors in the calculation of Court Fee also.

But, on the basis of alleged under valuation, the plaint can be rejected only when the Court valued the plaint and directed the plaintiff to make good the deficit Court Fee within the specified time and only on its failure, the plaint can be rejected under Order VII Rule 11(b) C.P.C, but not otherwise. Here, the basis for calculation is an independent calculation made by the defendant/petitioner herein and at best, the petitioner may ask the Court by filing an application to decide the value of the suit and Court Fee payable thereon, by invoking Order VII Rule 11(b) C.P.C. But, at this stage, unless the Court assesses the value of the suit and directed to make good the deficit Court Fee within the

³ 2009 (9) SCC 689

⁴ AIR 1923 Rangoon 73

⁵ AIR 1976 Patna 108

⁶ LAWS (APHC) 1967-10-18

⁷ (1966) II An.W.R.25

⁸ 2014 Law Suit (Delhi) 4306

specified time and failure of the plaintiff is a ground to reject the plaint. But at this stage, it cannot be rejected on the ground that the suit is undervalued. Therefore, taking into consideration the facts and circumstances of the case, it is too early to decide the value of the suit by this Court.

The Court only on proper valuation of the suit claim, called upon the plaintiff to make good the deficit court fee and the plaintiff failed to do so, then the Court may reject the plaint by exercising power under Order VII Rule 11 C.P.C. But, at this stage, the Court did not find any under valuation of the suit claimed requiring the plaintiff to rectify the valuation within the stipulated time and failed to do so. Therefore, there is absolutely nothing on record to reject the plaint by exercising power under Order VII Rule 11(b) C.P.C.

The Court below considered the scope of Order VII Rule 11(b) C.P.C and rightly declined to reject the plaint on the ground that the suit is not properly valued and the Court fee paid is not correct and the said finding does not call for interference of this Court, as the findings of the Court below is free from any legal infirmity, warranting interference of this Court under Article 227 of the Constitution of India.

Accordingly, the point is answered.

POINT NO.2

The second ground urged before this Court is that, there must be a demand and refusal to maintain a suit for partition of the property and in the absence of specific allegations in the plaint

about demand and refusal for partition of the property, there is no cause of action for the suit and the plaint is liable to be rejected by exercising power under Order VII Rule 11(a) C.P.C.

According to Order VII Rule 11(a) C.P.C, the plaint shall be rejected where it does not disclose a cause of action. What is cause of action is again a question to be determined. The word 'cause of action' is not defined anywhere. But, the law declared by the Apex Court and other Courts is suffice to define the word 'cause of action'. Cause of action is a bundle of facts which gives rise cause to file a suit or proceeding against other. The word 'cause of action' was not defined anywhere in C.P.C. But, it can be said to be a cause which gives rise to file a suit i.e. to redress remedy in the Court. Non-disclosure of cause of action in the plaint is a ground to reject the plaint, but the Court cannot decide whether the cause of action disclosed in the plaint is true or not at the time of deciding the application under Order VII Rule 11 C.P.C

What is cause of action, came up for consideration in **A.B.C. Laminart Pvt. Ltd. and another v. A.P. Agencies, Salem**⁹; wherein the word "cause of action" is defined as follows:

"Cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue."

In **Bloom Dehor Ltd. v. Subhash Himatlal Desai and others**¹⁰; the word "cause of action" is defined as follows:

"Cause of action means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court."

⁹ (1989) 2 SCC 163

¹⁰ (1994) 6 SCC 322

In **State of Haryana v. State of Punjab and Anr.**¹¹, the Apex Court held that the phrase "cause of action" as occurring in Order XXIII Rule 6(a) does not appear in Article 131. The phrase, which occurs in Section 20 of the Code of Civil Procedure and is commonly used in connection with 'ordinary' suits, has, in that context, "acquired a judicially-settled meaning. In the restricted sense, cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously, the expression means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises in "cause of action". Therefore, cause of action is nothing but set of facts which give rise to a party to redress his claim before the competent Court of law.

The plaint is liable to be rejected when it does not disclose a cause of action and where it appears from the statement in the plaint that the suit is barred by any law. At the first blush, it is obvious that the Court has to consider the plaint and plaint alone so as to see whether it does disclose a cause of action or the suit is not barred as framed in the plaint by any law. Therefore, the possible defence to be taken by the defendants in the suit, the evidence to be adduced at the time of trial in the suit, etc., are quite extraneous to the consideration of the Court when it is called

¹¹ (2004) 12 Supreme Court Cases 673

upon to reject the plaint on any of the grounds enjoined under Rule 11 of Order 7 of the Code, particularly clauses (a) and (d) thereof. Law seems to have been settled on the point. (vide **Sri Laxmi Co-operative Housing Society Ltd. vs. G. Mohan and Ors**¹²)

The expression "cause of action" has acquired a judicially-settled meaning. In the restricted sense cause of action means the 'circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit., including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises in "cause of action".

In Halsbury's Laws of England (Fourth Edition) it has been stated as follows :

"'Cause of action' has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. 'Cause of action' has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject matter of grievance founding the action not merely the technical cause of action.

¹² 2006(1)ALD607

In **Y. Abraham Ajith and Ors. v. Inspector of Police, Chennai and Anr**¹³, the Apex Court observed that "the expression 'cause of action' has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstance forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the. proceeding including not only the alleged infraction, but also the infraction coupled with the right itself. Compendiously the expression means every fact, which it would be necessary for the complainant to prove, if traversed, in order to support his right or grievance to the Judgment of the Court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove such fact, comprises in 'cause of action'."

Thus, from the definition of 'cause of action' under Halsbury Law of England and various judgments of the Supreme Court, the Court has to consider the pleadings in entirety, but in the cause of action mentioned in the plaint, find out whether the act done by the defendant gave rise to file a suit by the plaintiff/respondent herein against the defendants/petitioners.

Learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in **Dwarampudi Veeramma v. Kennala Dharma Reddy**¹⁴ and **I.T.C. Limited v. Debts Recovery Appellate Tribunal and others**¹⁵

Learned counsel for the petitioner mainly contended that, to claim partition of the property under Muslim Law, there must be a

¹³ 2004 C Cr LR (SC) 972

¹⁴ 1966 (2) An.W.R. 25 (N.R.C)

¹⁵ (1998) 2 Supreme Court Cases 70

demand by the plaintiff and refusal by the defendants, in the absence of demand and denial, no cause of action arises to claim partition by a Muslim.

In view of the law declared in the judgments referred supra, cause of action means an act of the defendants i.e. interaction coupled with right gives rise to claim right in the Court of law for redressal of the claim before the Competent Court. It is the major contention before this Court that, as per Muslim Law to claim relief of partition, there must be a demand and denial by the respondent and in the absence of demand and denial, there shall not be any cause of action for filing the suit. Therefore, there must be an averment to that effect that the plaintiff made a demand for partition and the same was denied by the respondent, otherwise, the plaint shall be rejected. In view of this specific contention, it is necessary to advert to the allegations made in the plaint, wherein, in paragraph 5, it is specifically averred as follows:

“.....The defendants No.1 to 4 were always promising to soon partition them but were dodging on one pretext or the other. Recently, plaintiff came to know that, defendants No.1 to 4 are trying to dispose of the plaint schedule properties in order to deny the other sharers of their legitimate shares in the said properties. Hence, plaintiff feels it unsafe to be in joint possession of his 7/72nd joint share and accordingly this suit is filed for partition and separate possession of his share in the plaint schedule properties.”

Basing on the plea extracted above, it is contended by the learned counsel for the petitioners that, in the absence of any demand, there is no cause of action for filing the suit. No doubt, if, specific allegation referred above is alone taken into consideration, it is difficult to accept the contention of the plaintiff/respondent. However, in the preceding sentence of paragraph No.5 of the plaint, which is extracted above, it is clear that after demise of

Mr. M. Chand Basha, the plaintiff repeatedly “**asked**” the defendants 1 to 4 to divide the plaint schedule properties among all the sharers and to deliver separate possession. This, sentence is suffice to conclude that the plaintiff asked defendants 1 to 4 for partition of the properties. But, the learned counsel for the petitioners Sri T. Kumar Babu contended that using the word ‘**asked**’ is not sufficient to give rise to cause of action file a suit for partition against the sharers.

As per The New Oxford Dictionary of England, the word ‘**ask**’ means, say something in order to obtain an answer or some information.

The learned counsel for the petitioners contended that, unless there is a demand, cause of action cannot be inferred from the language used in the plaint. The word ‘dodging’ used in the plaint does not mean that the demand is refused. The word ‘employed in the plaint is ‘asked’ (in 11th line, para 5 of the plaint) as a substitute for the word ‘legal demand’. The meaning of the legal demand is a demand properly made, as to form, time, and place, by a person lawfully authorized (**Foss v. Norris, 70 Me.118**, Black’s Law Dictionary Free Online Legal Dictionary 2nd edition, **P. Ramanatha Aiyar’s The Law Lexicon 3rd Edition 2012**)

Admittedly, no legal notice prior to institution of the suit was issued and there is no averment of verbal or written demand in the plaint and it cannot be considered, as the legal demand has to give rise to a cause of action. Consequently, there is no infringement of legal right of one person by the other to give rise to cause of action. where demand is required, the plaintiff must establish that, he made a demand that is sufficiently definite and complete to apprise

the defendant of the specific property claimed. (vide **Ram Chandra Laddha and another v. Smt. Teja Bai and others**¹⁶)

It is also contended that, whether a real cause of action is set out in the plaint or something purely illusory has been stated with a view to get out of Order VII Rule 11 C.P.C and whether clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint and whether any fake cause of action is created for the purpose of the suit is to be looked into (vide **I.T.C Limited v. Debts Recovery Appellate Tribunal and others**¹⁷).

If clever drafting has created the illusory cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch. XI) and must be triggered against them. The judgment of the Apex Court in **T. Arivandandam v. T.V. Satyapal and another**¹⁸ at best would be useful to highlight the duty of the Judge to reject the plaint at the stage when the parties were examined under Order X C.P.C. and mere clever drafting may create an illusory cause of action, but, that cannot be spared by the Courts as such the gullible grant of ex parte orders tempts gamblers in litigation into easy courts to proceed with the vexatious litigation which would worsen the situation, if such situation is encouraged. But the principle has no

¹⁶ AIR 1966 Allahabad 522

¹⁷ (1998) 2 SCC 70

¹⁸ : (1977) 4 SCC 467

application to the present facts of the case.(vide **Legand Estates Private Limited vs. Mir Zaheer Mohammed Khan**¹⁹)

In view of the allegations, again it is appropriate to turn to the facts of the case for better appreciation of the case. In paragraph 6 of the plaint, it is averred that on M. Chand Basha was the absolute owner of the plaint schedule property and he was in possession till he died on 04.06.2015, hence, cause of action of the suit arose on 04.06.2015 i.e the date of death of M. Chand Basha and on all these dates, the plaintiff demanded the defendants 1 to 4 for partition of the schedule properties. Therefore, according to plaintiff, demand was made subsequent to the death of M. Chand Basha on 04.06.2015. But, in the earlier paragraph No.5, he was not specific that a demand was made, but he asked the defendants for partition, that by itself is sufficient and mere asking is itself sufficient. However, the normal rule is that the pleadings have to be considered liberally.

In **Mrs. Manjushri Raha v. B. L. Gupta**²⁰, the Supreme Court made it clear that the pleadings have to be interpreted not with formalistic rigour but with latitude or awareness of low legal literacy of poor people.

If, this principle is applied to the present facts of the case, the allegations made in 11th line of paragraph 5 “that the plaintiff asked the defendants 1 to 4 for partition of the properties” and the language used in paragraph 6 of the plaint that the plaintiff demanded the defendants 1 to 4 for partition of the suit schedule property is suffice to conclude that a demand was made for partition of the property. But, whether, it is real demand or not is a

¹⁹ 2017 (5) ALT 554

²⁰ AIR 1977 SC 1158

question to be decided at the end of the trial, but not at this stage. Whether the demand is real or not cannot be decided at this stage, in view of the totality of the allegations made in the complaint, more particularly, paragraphs 5 & 6 of the plaint, asking for partition and demanding for partition in two different paragraphs. Therefore, considering the pleadings liberally not insisting interpretation with formalistic rigour but with latitude or awareness of low legal literacy of poor people, in view of the judgment referred supra, I find it is difficult to accept the contention of the learned counsel for the petitioners to reject the plaint at the threshold on the ground that the plaint does not disclose any cause of action.

P O I N T NO.3:

One of the contentions raised by the learned counsel for the petitioners is that the suit under Mohammedan Law is not maintainable. But, based on this contention this Court cannot reject a plaint, as it is not covered under Order VII Rule 11 C.P.C and it is for the Court to decide whether Mohammedan Law or Indian Succession Act is applicable to the present facts of the case and if, for any reason, the Court conclude that Mohammed Law is not applicable, the Court can decide in accordance with law, which governs such issue before the Court. Hence, on this ground also, the plaint shall not be rejected at the threshold.

This Court can exercise revisional jurisdiction under Article 227 of the Constitution of India in limited circumstances and nature of the jurisdiction is supervisory over the subordinate courts or the tribunals under the control of the High Court. The

power of revision under Article 227 of the Constitution of India is limited to find out whether the order under challenge, passed by the subordinate court or tribunal within their jurisdictional limits and the main intention of exercising both administrative and judicial control under Article 227 of Constitution of India is to keep them within the bounds of their jurisdiction and not to allow them to transgress from their jurisdictional limits, but not otherwise. The Court can exercise jurisdiction under Article 227 of the Constitution of India under the following circumstances:

- “a) When the inferior court assumes jurisdiction erroneously in excess of power.
- b) When refused to exercise jurisdiction.
- c) When found an error of law apparent on the face of record.
- d) Violated principles of natural justice.
- e) Arbitrary or capricious exercise of authority or discretion.
- f) Arriving at a finding which is perverse or based on no material.
- g) A patent or flagrant error in procedure.
- h) Order resulting in manifest injustice.
- i) Error both on facts and law or even otherwise.”

Similarly, the Court cannot exercise its discretion under Article 227 of the Constitution of India in the following circumstances:

- "a) Where the only question involved is one of interpretation of deed;
- b) On question of admission or rejection of particular piece of evidence, even though the question may be of everyday recurrence;
- c) To correct erroneous exercise of jurisdiction, as a Court of revision;
- d) To set aside an intra vires finding of the fact, except where it is founded on no material or is perverse;

- e) To correct an error of law, not being an error apparent on the face of the record;
- f) To interfere with the intravires exercise of discretionary power, unless it is violative of principles of natural justice;
- g) The Court shall not interfere on a merely technical ground which would not advance substantial justice."

Article 227 of Constitution of India deals with power of superintendence by the High Court over all Subordinate Court and Tribunals. The power of superintendence conferred upon the High Court by Article 227 is not confined to administrative superintendence only, but includes the power of judicial revision also even where no appeal or revision lies to the High Court under the ordinary law, rather power under this Article is wider than that of Article 226 in the sense that it is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction and such power can also be exercised *suo motu*. It is a well settled principle that the High Court can exercise supervisory power under Article 227 of Constitution of India, as held by the Apex Court in **State (N.C.T. Of Delhi) v. Navjot Sandhu@ Afsan Guru**²¹ that under Article 227 of Constitution of India the High Court can interfere with the directions of the Subordinate Courts.

In view of the law laid down by the Apex Court, this Court cannot exercise its power under Article 227 of the Constitution of India though the order is wrong, since the power can be exercised only to keep the subordinate Courts and Tribunals within its bounds.

²¹ AIR 2005 SC 3820

In view of the law declared by the Apex Court in the above referred judgments, I find no ground to interfere with the order in I.A.No.364 of 2016 in O.S.No.79 of 2016 dated 24.04.2017 passed by the I Additional District Judge, Kurnool, exercising power under Article 227 of the Constitution of India. However, it is left open to the petitioners to raise all their contentions raised before this Court during trial or at appropriate stage, subject to permissibility and in case, the petitioners raised any objection regarding undervaluation of the suit and payment of Court Fee, the Trial Court can exercise power under Section 11 of the APCF & SV Act and pass appropriate order, but on the ground that the suit was not properly valued even before deciding, this Court cannot reject the plaint at this stage at the threshold. Hence, I find no ground warranting interference of this Court with the order passed by the Trial Court, while permitting the petitioners to raise all their contentions legally permissible before the Court below and on raising such contentions, the Trial Court is directed to answer those contentions in accordance with law.

In the result, civil revision petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date: 11.04.2018

SP