

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.3189 of 2018

ORDER:

The unsuccessful petitioner/1st defendant filed this revision petition, under Section 115 of the Code of Civil Procedure, 1908, (for short, 'the Code'), assailing the order, dated 28.02.2018, of the learned Senior Civil Judge, Addanki of Prakasam District, passed in I.A.No.1634 of 2017 in O.S.No.89 of 2009.

2. I have heard the submissions of Sri Chakkilam Venkateswarlu, learned counsel for the petitioner/1st defendant ('the 1st defendant, for brevity), and of Sri J. Seshagiri Rao, learned counsel for the 2nd respondent/2nd plaintiff ('the 2nd plaintiff', for brevity). The 1st respondent/1st plaintiff died and other defendants being co-defendants are stated to be not necessary parties. I have perused the material record.

3. The facts, which are necessary to be stated as a prelude, in brief, are as follows:

There are two suits now on the file of the Senior Civil Court, Addanki. Earlier to the instant suit, the respondents 1 and 2 herein [figuring as the 1st plaintiff (since died) and the 2nd plaintiff] filed the former suit O.S.No.238 of 2009 (new O.S.No.197 of 2014) originally on the file of the Principal Junior Civil Judge, Addanki, against the revision petitioner herein and three others i.e., respondents 3 to 5 in this revision petition. That suit was filed for declaration that the

plaintiffs/respondents 1 and 2 herein are the absolute owners of the land in a total extent of Ac.3.75 cents (Ac.0.56 cents in Sy.No.502/3 + Ac.3.19 cents in Sy.No.502/4) of Paidipadu Village, described in the schedule annexed to the plaint. The 1st defendant/revision petitioner filed the written statement and is resisting the said suit. The said suit is later transferred to the file of the Senior Civil Judge, Addanki, and is re-numbered as O.S.No.197 of 2014 for the reason that the subsequent suit O.S.No.89 of 2009 is pending on the file of the said Court. The said latter suit O.S.No.89 of 2009 was filed by the very same plaintiffs, that is, the respondents 1 and 2 herein against the revision petitioner/1st defendant and others for declaration that the registered sale deed, dated 21.08.2009, executed by the defendants 2 to 4 in favour of the 1st defendant is void, unenforceable and not binding on the said plaintiffs and for perpetual injunction restraining the 6th defendant therein, that is, the Special Deputy Collector, Land Acquisition, from making payment of compensation payable in respect of the very same subject land, to the 1st defendant therein, i.e., the revision petitioner herein, and for other reliefs. In the latter suit, the revision petitioner, who is the 1st defendant in both the suits, filed the subject interlocutory application under Order VII Rule 11 read with Section 151 of the Code, requesting to reject the plaint in the latter suit i.e., the instant suit O.S.No.89 of 2009. Since the 1st plaintiff died, the 2nd plaintiff resisted the said application by filing a

counter. By the impugned order, the trial Court dismissed the application. Therefore, the 1st defendant is before this Court.

4. The case of the 1st defendant, in brief, is as follows:

“The very same plaintiffs filed the former suit O.S.No.238 of 2009 (re-numbered as O.S.No.197 of 2014) for declaration of ownership in respect of the same property and for perpetual injunction *inter alia* pleading in the plaint that the sale deed, dated 21.08.2009, obtained by the 1st defendant/revision petitioner from the defendants 2 to 4 in the said former suit is unenforceable. While the 1st defendant is contesting the said former suit, the 2nd defendant died and his L.Rs were brought on record, after recognizing the L.Rs who are already on record. While so, the very same plaintiffs filed the instant latter suit for declaration that the aforesaid sale deed in favour of the 1st defendant is void and unenforceable and to direct the 6th defendant/Land Acquisition Officer to not to pay to the 1st defendant, the compensation in respect of the land, which is the subject matter in both the suits. The latter suit is filed during pendency of the former suit. Now, both the suits are pending on the file of the Senior Civil Court, Addanki. After going through the written statement of this defendant in the former suit, and to fill up the lacunae and to get over their laches, the plaintiffs, without amending the plaint in the former suit, filed the latter suit. The subject matter and cause of action in both the suits is one and the same. The issues which are involved in the former suit are directly and substantially in issue in the subsequent

suit. There is no separate cause of action for the latter suit and the cause of action mentioned in both the suits as is evident from the relevant paragraphs in the complaints in the two suits is admittedly one and the same. The present suit is barred under Section 10 of the Code. Hence, the complaint in the instant latter suit is liable for rejection.”

5. The case of the 2nd plaintiff, as stated in his counter, in brief, is this: ‘The material allegations in the affidavit of the 1st defendant filed in support of the petition are false. The parties to the suits and the reliefs sought in the two suits are not the same. The averment that after filing of the written statement in the former suit, the plaintiffs filed the latter suit to fill up the lacunae and to get over the laches, without amending the complaint in the former suit, is not correct. The causes of action in both the suits are different & distinct and so also the reliefs claimed in both the suits. The 1st suit is filed for declaration of title; whereas the 2nd suit is filed for declaration that the sale deed obtained by the 1st defendant from the defendants 2 to 4 is void and unenforceable and to direct the 6th defendant/Land Acquisition Officer not to pay compensation to the 1st defendant, as the plaintiffs apprehend that the compensation may be paid to the 1st defendant in respect of the subject complaint schedule land. The averments in the complaint in the instant suit disclose a cause of action. The 2nd suit was instituted in the year 2009. The instant application for rejection of complaint is filed by the 1st defendant belatedly in December, 2017, only to drag on the proceedings. There are no grounds, much less valid

grounds, urged by the 1st defendant. Hence, the petition may be dismissed.'

6. At the hearing, while reiterating the pleaded contentions of the 1st defendant in support of the request for rejection of the plaint, learned counsel for the 1st defendant stated as follows:

Though the 1st suit is for declaration of title and for perpetual injunction, the basis for the suit is the averment that the sale deed of the 1st defendant is void and unenforceable. The 2nd suit is filed claiming specifically a relief that the said sale deed is void and unenforceable and to restrain the Land Acquisition Officer from paying the compensation to the 1st defendant. The causes of action in paragraph 'IV' of the plaints in both the suits is verbatim the same. Therefore, there is no separate and distinct cause of action for the second suit. As there is no separate and distinct cause of action for the second suit, and as the second suit was filed on the very same cause of action, the said suit is not maintainable. The plaint in the second suit is liable for rejection for want of cause of action.

6.1 He alternatively contended that the subsequent suit may be stayed invoking provisions under Section 10 of the Code in the event the Court comes to the conclusion that Order VII Rule 11 of the Code is not applicable to facts of the case.

7. Learned counsel for the 2nd plaintiff, while reiterating his case, which is excerpted supra, *inter alia* contended as follows: 'The reliefs

claimed in both the suits are different and distinct. When there is a proposal to acquire the land, the plaintiffs apprehended that the compensation may be paid to the 1st defendant, as he is having a sale deed, though void and unenforceable. Therefore, the 2nd suit is filed seeking a distinct relief in that regard and to direct the Land Acquisition Officer not to pay the compensation to the 1st defendant. The averments in the plaints in both the suits if are read in juxtaposition, it is very clear that the causes of action are different and that there is independent and distinct cause of action for both the suits. Further, in the former suit, there are only four defendants i.e., defendants 2 to 4 who executed the sale deed in question in favour of the 1st defendant; whereas, in the 2nd suit, the Land Acquisition Officer is also a party defendant. Therefore, the causes of action, the parties to the suits and the reliefs claimed in the two suits are different. Hence, the trial Court is justified in dismissing the petition of the 1st defendant.'

8. I have given earnest consideration to the facts and submissions.

9. A plain consideration of the respective contentions of the parties and the submissions, which are stated supra, in detail, make it manifest that the reliefs claimed and the causes of action in both the suits are distinct & different, though the plaintiffs, the subject matter of both the suits and some of the defendants are common. As per the legal position obtaining, the plaint shall be rejected where the plaint

does not disclose a cause of action. In *Bhau Ram vs. Janak Singh and others*¹, it is held by the Supreme Court as under:

“The law has been settled by this Court in various decisions that while considering an application under Order VII Rule 11 Code of Civil Procedure, the Court has to examine the averments in the plaint and the pleas taken by the Defendants in its written statements would be irrelevant.

Thus, while considering an application under Order VII Rule 11 of the Code, the Court is required to look into the averments in the plaint and find out whether the plaint discloses a cause of action or not. On a plain consideration of the plaint in the suit on hand, it is clear that the material facts constituting the cause of action are pleaded in the plaint of the subsequent suit. On the above analysis, this Court finds that the revision petition is devoid of merit and is liable to be dismissed.

10. Before parting, it is necessary to deal with the alternative contention, whereby a request was made to stay the instant suit, which is the latter suit, by invoking the provision of Section 10 of the Code. The trial Court, on the said aspect, noted in its orders that since the petitioner cannot claim two reliefs in one interlocutory application, the said request of the petitioner need not be considered. The 1st defendant, admittedly, did not file the interlocutory application specifically praying to stay the latter suit by invoking the provision of Section 10 of the Code though a passing statement is made in the

¹ AIR 2012 SC 3023

pleading in the said regard. Learned counsel for the plaintiffs contended that the fundamental requirement for application under Section 10 of the Code is that the whole of the subject matter in both the suits must be identical and that the matter in issue in the former suit must be directly and substantially in issue in the latter suit and that mere identity of the issues incidentally or collaterally is not sufficient. Be that as it may. This Court is not inclined to go into the said aspect in this revision, as it is for the 1st defendant, if so advised and if he so desires, to invoke the said provision and file an appropriate application before the trial Court and that in such an event, it is for the trial Court to consider the said aspect of the matter.

11. In the result, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this revision petition shall stand closed.

M. SEETHARAMA MURTI, J

14th September, 2018
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