

HON'BLE MS. JUSTICE J. UMA DEVI
CIVIL REVISION PETITION No.3525 OF 2018

ORDER:

Aggrieved by the order of dismissal, dated 30.04.2018, passed in I.A.No.86 of 2018 in O.S.No.139 of 2017 filed under Order VII Rule 11 CPC before the Court of Principal Junior Civil Judge, Siddipet, the present civil revision petition is filed by the petitioners in the above Interlocutory Application.

The petitioners are the defendants in O.S.No.139 of 2017 filed by the respondents herein. The respondents' case is that one Sri Jeekuru Narayana and Sri Jeekuru Balaish were brothers. The 1st respondent herein is the son of Sri Jeekuru Narayana. The 2nd respondent Smt.Jeekuru Renuka is his wife. Petitioners Nos.1 and 2 are the sons of Sri Jeekuru Balaiah and petitioners Nos.3 to 7 are their agnates. Prior to the filing of O.S.No.139 of 2017 the respondents filed the suit O.S.No.91 of 2015 on the file of Junior Civil Judge, Siddipet against the petitioners for declaration of their title over the schedule mentioned property, for perpetual injunction and rectification of entries in the revenue records and the same was dismissed as not pressed. Subsequent to the dismissal of the said suit, they filed the suit in O.S.No.139 of 2017 seeking to restrain the petitioners from interfering with their peaceful possession of the suit schedule property.

It was asserted by the respondents that Jeekuru Balaiah, the father of petitioners Nos.1 and 2, executed a document, dated 10.05.1986, in the presence of the village elders, in favour of the father of the 1st respondent in respect of the suit schedule land, and after the death of his father, it fell to his share, and he along with his wife continued in possession of the suit schedule property ever since the death of his father. It was also

contended by the respondents that during the lifetime of Jeekuru Balaiah, he created a nominal registered family partition deed, dated 19.11.2014, in favour of petitioners Nos.1 and 2 by suppressing the earlier alienation made by him in favour of 1st respondent's father, and tried to occupy the suit schedule property illegally. Under the said circumstances, the respondents filed O.S.No.91 of 2015 for declaration, and for rectification of entries in revenue records, and that they got dismissed the said suit as not pressed as it was assured by the petitioners before the elders that they would not raise any objection for mutation of the suit land in their names in revenue records as a mark of respect towards their demised father Sri Jeekuri Balaiah. But, contrary to the assurance they gave in the presence of the elders, the petitioners again tried to interfere with their peaceful possession and enjoyment of the suit schedule property. Therefore, the respondents filed the suit for perpetual injunction vide O.S.No.139 of 2017 against the petitioners, who were the defendants Nos.1 and 2 in O.S.No.59 of 2015, and also against their agnates. The attempt made by the petitioners to disturb their possession over the schedule mentioned property to occupy it illegally by ploughing it was the cause for filing the subsequent suit. The Court below taking note of the said plea asserted in the plaint rightly dismissed the application made in I.A.No.86 of 2018 under Order VII Rule 11 read with Section 151 CPC by the petitioners seeking to reject the plaint filed in O.S.No.139 of 2017.

The first contention raised by the petitioners in the I.A. was that the respondents, while getting their earlier suit dismissed as not pressed, did not seek permission of the Court for filing of a fresh suit. The second contention they raised was that the present suit was not properly valued and that the Court fee paid by the respondents was not sufficient. The petitioners relied on the judgments in ***vice Chairman and Managing***

Director, A.P.Mineral Development Corporation, Hyderabad and another vs. GMK Minerals Private Limited, Hyderabad¹, Holy Cross Petitioner vs. Lonnappan Thirtil and another² and Akula Chennakeshavulu@Keshavaiah and others v. Mulla Venkateshwara Reddy and others³ before the court below in support of their contentions.

The Court below, after hearing the submissions made on behalf of both the parties, observed that as no adjudication took place on merits in the earlier suit, therefore, the plea raised by the petitioners that the respondents did not reserve any right to file a fresh suit, while getting the earlier suit dismissed as not pressed, cannot be a ground to reject the plaint. The Court below had also taken the view that the defence, if any, raised by the defendants in the written statement is wholly irrelevant at the stage of deciding an application filed under Order VII Rule 11 CPC and it is only the contents of the plaint that need to be looked into to decide an application under Order 7 Rule 11 CPC, accordingly, dismissed the I.A.

The petitioners are the defendants in O.S.No.139 of 2017. They have filed their written statements. Before framing of the issues by the Court below, the petitioners appear to have filed an Interlocutory Application, vide I.A.No.86 of 2018 seeking the relief of rejection of the plaint filed by the respondents in O.S.No.137 of 2017 on the ground that they have not reserved their right to file the present suit O.S.No.139 of 2017 while getting their suit dismissed as not pressed and that the present suit is not properly valued. These are the grounds pleaded by them to question the maintainability of suit O.S.No.139 of 2017 and to reject the plaint filed therein.

¹ 2014(2) ALD (DB)

² AIR 1990 Kerala 215

³ 2009(1) ALD 587

It is evident from the material on record that prior to the filing of the present suit for injunction simplicitor, the respondents have filed a suit in O.S.No.91 of 2015, and they have got dismissed the said suit as not pressed on 26.04.2017. The reason given by the respondents to get their earlier suit dismissed as not pressed, as set out in the plaint is that there was assurance from petitioners Nos.1 and 2 (defendants Nos.1 and 2 in the earlier suit) that they would not make any objection for mutation of the suit land in their names in the revenue records as a mark of respect towards their demised father late Sri Balaiah. It was contended by the respondents that as petitioners Nos.1 and 2 acted in contravention of the assurance they gave after the death of Jeekuru Balaiah and tried to interfere with their peaceful possession and enjoyment over the suit schedule property by ploughing it and by removing the stone pillars erected therein, they filed the present suit seeking to restrain them from interfering with the peaceful possession and enjoyment of the suit schedule land by them.

The Court below, on a careful perusal of the pleadings asserted by the respondents in the plaint filed in O.S.No.139 of 2017, held that withdrawal of the earlier suit filed by them without reserving their right to file a fresh suit cannot be a ground to reject the plaint and that the cause for filing the subsequent suit is different from the cause in the earlier suit, and, accordingly, it has rejected the request made by the petitioners to reject the plaint filed in O.S.No.139 of 2017.

The attempt alleged to be made by petitioners Nos.1 and 2 after the death of Jeekuru Balaiah to interfere with peaceful possession and enjoyment of the schedule mentioned property by the respondents by ploughing the land and by removing the stone pillars erected therein by them is the cause for them to file the subsequent suit.

In ***Legand Estate Private Limited vs. Mir Zaheer Mohammed Khan***⁴ the learned single Judge of this Court on referring to the observations made by the Apex Court in several other cases, particularly the law laid down in ***Jageshwari Devi and others v. Shatrugam Ram***⁵ has held as follows:

“56. In view of the law declared by the Supreme Court in the above judgment, it is clear that whether cause of action is real or not, is a question to be determined only at the end of the trial, but, at the stage of considering the application under Order VII Rule 11(a) CPC, 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. In the present facts of the case, the plaint disclosed cause of action and thereby, the Trial Court refused to reject the plaint by exercising power under Order VII Rule 11 CPC and consequently, the order of the Trial Court cannot be faulted even by applying the principles laid down in various judgments referred supra.

57. On overall consideration of entire material on record, including the allegations made in the plaint, and applying the law laid down by the Apex Court, when the plaint disclosed cause of action, the Court cannot exercise its power under Order VII Rule 11(a) CPC to reject the plaint. Therefore, the Trial Court rightly refused to reject the plaint on this ground.”

For the sake of better understanding, I feel it appropriate to reiterate the cause mentioned by the respondents by filing the suit in O.S.No.139 of 2017, as noted in paragraphs Nos.13 and 15 of the plaint.

“13. That keeping those grudges all the defendants herein interfered into the suit schedule property on 16.6.2017 at about 4.00 pm got damaged the ploughed suit schedule property, beat the plaintiffs and

⁴ 2017(5) ALT 554

⁵ (2007) 15 SCC 52

their family members, try to outrage the modesty of plaintiff No.2, abused in filthy language and threatened to kill the plaintiffs if they not leave the suit schedule property to them by creating dire consequences.

15. The matter stood thus on 30-6-2017 all the defendants in drunken condition once again came to the suit land damaged the stone pillars erected by the plaintiffs, damaged the cattle shed and gave warning to the plaintiffs to withdraw the police complaint lodged by the plaintiff No.2 due to hike of value of suit lands defendants are playing fraud against the plaintiff. The plaintiffs herein have every right and long possession over the suit schedule property. The plaintiffs are raising maize crop in the suit schedule property for this season.

The judgment in **Akula Chennakeshavulu's** case (3 supra) does not come to the aid of the petitioners for the reason that in the above case the subsequent suit for permanent injunction to restrain the defendants from interfering with the plaintiffs' peaceful possession of the suit schedule property is filed after disposal of their suit for declaration on merits.

In the instant case, the earlier suit filed by the respondents was dismissed as not pressed before commencement of trial, and the issues involved therein were not adjudicate on conducting a full fledged trial. Moreover, no objection whatsoever was raised by the petitioners, for dismissal of the earlier suit filed by the respondents herein. The subsequent attempt made by the petitioners to meddle with the peaceful possession and enjoyment of the schedule mentioned property by the respondents by ploughing it and by removing the stone pillars erected therein is the fresh cause of action for them to file the subsequent suit. As the law would permit for filing of the subsequent suit for injunction simplicitor based on the fresh cause of action, the court below, in my view has rightly not accepted the contention of the petitioners that filing of the later suit without seeking permission of the court to get their earlier suit dismissed as not pressed is not permissible under law.

For examination of truthfulness of the cause mentioned for filing of the subsequent suit, an enquiry needs to be conducted.

So far as the contention that the present suit was not properly valued and that the Court fee paid by the respondents was not sufficient, it appeared that the court below in its order stated that the office had already taken an objection on the court fee at the time of numbering of the suit itself, and after complying with the office objections on the aspect of court fee, the suit was numbered.

In the light of the discussion made in the above paragraphs by me, there cannot be any hesitation for me to hold that the court below on close scrutiny of the contentions raised by the parties in their respective pleadings and the proposition of law laid down by the Apex Court in this regard has rightly dismissed the application filed under Order VII Rule 11 CPC by the petitioners seeking to reject the plaint filed by the respondents in O.S.No.139 of 2017. The order under challenged does not need interference of this court as it appears to have been passed validly in accordance with law.

The Civil Revision Petition fails for the reasons mentioned above and the same is hereby dismissed accordingly. But there shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Date: 20th July, 2018.
Jsu/Dsr

J. UMA DEVI, J