

**HONOURABLE SRI JUSTICE
D. V. S. S. SOMAYAJULU**

APPEAL SUIT NO. 1029 OF 2018

J U D G M E N T :

A.S.No. 1029 of 2018 is filed challenging the order dated 05/09/2017 passed by the VII-Additional District and Sessions Judge, Visakhapatnam, in O.S.No.443 of 2015, rejecting the plaint filed by the plaintiffs.

2. O.S.No. 443 of 2015 is filed by Sri Potnuru Ramu and three others for declaration that they are the lawful owners and for consequential relief of eviction of the defendants and their persons from the suit-schedule property and for restoration of the possession etc.

3. After the said suit was filed, the defendants entered appearance and they filed an application, I.A.No. 1945 of 2015 under Order-VII, Rule-11 of Civil Procedure Code, praying the Court to reject the suit with exemplary costs. A counter was filed on behalf of the respondents 3 and 4 and that application was taken-up for hearing. After hearing both the counsel and after taking evidence in the form of documents, which were marked as Exs.P-1 to P-6 by the petitioner, who is the defendant in the suit, the lower Court was pleased to reject the plaint holding that the plaintiffs have not proved the case.

5. Questioning the said Order, the present appeal is filed. This Court has heard Sri N. Chalapathi Rao, learned counsel

appearing for the appellant and Sri K. Manamada Rao, learned counsel appearing for the respondents. Sri N. Chalapathi Rao, learned counsel argued as per the settled law on the subject an application under Order-VII, Rule-11 of CPC can be decided only on the basis of the averments of the plaint. It is his contention that neither the averments in the written statement nor the documents if any filed by the defendants are relevant for deciding an application under Order-VII, Rule-11 of C.P.C.

6. The learned counsel also points out in Para No.6 of the impugned order, the lower Court marked Exs.P-1 to P-16, which are filed by the petitioner, who is the defendant in the suit. After considering the said documentary evidence in Para No.11 at the concluding portion, the Court came to the conclusion that the plaint has to be rejected. The learned counsel submits that this is a blatant error committed by the Court below and therefore, requests the appeal itself should be heard and disposed of.

7. The learned counsel for the respondents on the other hand supported the judgment and stated that the order passed is a reasoned order, passed after considering the available documentary evidence and that in view of the documentary evidence, the petitioners, who are the defendants in the suit should not be subjected to protracted trial and that the Court below rightly rejected the plaint.

8. Sri N. Chalapathi Rao, learned counsel also cited judgment in **MADANURI SRI RAMA CHANDRA MURTHY V/s.**

SYED JALAL¹, wherein the Hon'ble Supreme Court reiterated the position of law and held that the relevant facts that need to be looked into for deciding an application under Order-VII, Rule-11 of CPC are the averments in the plaint only. The Hon'ble Supreme Court also said if on a reading of the entire plaint, it is found that the suit is manifestly vexatious and merit-less then the Court should exercise the power under Order-VII, Rule-11 of CPC. The Supreme Court also clearly held since the power conferred on the Court to terminate a civil action under Order-VII, Rule-11 of CPC is drastic the conditions enumerated in Order-VII of CPC should be followed strictly. The learned counsel points out that in this case, a reading of the plaint does not disclose that there is no cause of action or that it is barred by time. The lower Court according to the learned counsel came to the conclusion that there is no cause of action for this suit and that the plaintiff's father had no land left to convey on the basis of documents, which are filed by the petitioners in the Court below [the defendant in the suit]. These documents are marked as Exs.P-1 to P-16.

9. This Court after hearing both the learned counsel is of the opinion that the lower Court committed a serious error in rejecting the plaint in the manner that it did. The plaint can only be rejected, if the plaint does not disclose a cause of action or that it is barred by any law and the conditions specified under Order-VII, Rule-11 of CPC are clearly made out. Even if there is small cause of

¹) **A.I.R. 2017 S.C. Page No. 2653**

action, the plaint cannot be rejected, “whether the cause of action is sustainable or not is a different aspect”. But if the plaint discloses a cause of action it cannot summarily rejected. Therefore, this Court after reading of the entire judgment is of the opinion that the order dated 05/9/2017 is totally contrary to the settled law on the subject. Two orders were also passed on the same day in I.A.No. 1945 of 2015 and also in the main suit itself. This is also an error apparent on the face of record. If the lower Court was of the opinion that I.A.No. 1945 of 2015 itself was to be allowed, it should have rejected the plaint after allowing I.A.No. 1945 of 2015. There is no need or necessity to pronounce two orders on the same subject.

10. With the above observations, the appeal is allowed and the matter is remanded to the lower Court for a fresh hearing of I.A.No.1945 of 2015 according to the law on the subject. In the circumstances, both parties shall bear their own costs. The lower court shall decide the matter without being influenced by what is stated in this order.

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

JUSTICE D.V. S. S. SOMAYAJULU

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[RESULT : ALLOWED AND REMANDED]



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Court Master : I s L