

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CIVIL REVISION PETITION No. 5025 OF 2016**

**ORDER:**

This civil revision petition under Article 227 of the Constitution of India is filed by the petitioners-defendants challenging the order dated 23-09-2016 in I.A.No. 741 of 2016 in O.S.No. 93 of 2007 on the file of the Court of Senior Civil Judge, Peddapuram (for short, 'the Court below'), whereby the Court below dismissed the abovementioned interlocutory application filed under Order VII Rule 11 (a) of CPC.

2. The petitioners who are defendants in the above suit filed I.A.No. 741 of 2016 under Order VII Rule 11 (a) of CPC to reject the plaint on the ground that it does not disclose cause of action against defendant No. 4 with regard to item Nos. 1 to 6 of landed property and that there is no whisper about particulars of trespass into the property. Learned counsel for the respondents-plaintiffs opposed the petition by filing detailed counter. Upon hearing both counsel, the Court below passed the impugned order.

3. Feeling aggrieved, the present revision is filed on the ground that the petitioners obtained *interim* injunction in C.M.A.No. 287 of 2001 against the respondents from interfering with their peaceful possession and enjoyment of the property and it is still in force and when this Court recorded a finding and passed *interim* injunction, question of trespassing of the petitioners into the property does not arise but the Court below committed an error in dismissing the petition and prayed to set aside the same.

4. While learned counsel for the petitioners has reiterated the grounds urged in the revision, learned counsel for the respondents has supported the order in all respects.

5. Considering rival contentions, perusing the grounds of revision and copy of the plaint, the sole point that arises for consideration is

***"Whether the plaint discloses cause of action against petitioner No.4-defendant No. 4, if not, whether the plaint is liable to be rejected by exercising power under Order VII Rule 11 (a) of CPC?"***

6. The suit is filed for declaration of title and *mesne* profits. The petitioners-defendants asserted in the written statement that they are in possession and enjoyment of the property and therefore question of their trespassing into the land does not arise. 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 is not defined anywhere in CPC but it can be said to be a cause which gives rise to file a suit i.e. to redress remedy in Court. Non disclosure of cause of action in plaint is a ground to reject the plaint but 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 of CPC. On bare look at the plaint, it discloses cause of action in para No. 9 and apart from that, claiming relief of *mesne* profits as defined under Section 2 (12) of CPC itself indicates that the petitioners are in unlawful possession of the property. Though the petitioners obtained *interim* injunction referred above, that also supports the case of the respondents that the petitioners are in possession of the property. Whether the possession of the petitioners is unlawful or not is the question to be decided at the end of trial and at this stage, on the ground that the petitioners are in possession of the property, the plaint cannot be rejected under Order VII Rule 11 (a) of CPC.

7. Learned counsel for the petitioners would contend that when the plaint did not disclose cause of action, it is liable to be rejected at the threshold and when the cause of action is illusory, Court is bound to reject the plaint. As discussed above, when the plaint disclosed cause of action and more particularly claiming the relief of *mesne* profits itself is suffice to conclude that the petitioners are in possession and whether or not it is lawful or unlawful possession is a question to be decided only at the time of pronouncing judgment. Hence, I find no ground to interfere with the order passed by the Court below. Consequently, the petition is liable to be dismissed.

7. The civil revision petition is accordingly dismissed and the Court below is directed to decide the issues in accordance with law uninfluenced by the observations made hereinabove. Pending miscellaneous petitions, if any, shall stand dismissed in consequence.

Date: 14-11-2018.

JSK

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**M.SATYANARAYANA MURTHY, J.**

