

THE HON'BLE SRI JUSTICE SANJAY KUMAR
CIVIL REVISION PETITION NO.5988 OF 2018

O R D E R

The petitioner society is defendant 5 in O.S.No.1556 of 2007 on the file of the learned VIII Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar. It filed I.A.No.79 of 2018 therein under Order 7 Rule 11 CPC seeking rejection of the plaint. By order dated 18.09.2018, the trial Court dismissed the said I.A. Aggrieved thereby, it is before this Court.

Heard Sri Vijay Kumar Heroor, learned counsel for the petitioner/defendant 5, and Sri Seetharam Reddy, learned counsel representing Sri Mulagani Rami Reddy, learned counsel for the respondents/plaintiffs.

O.S.No.1556 of 2007 was filed by the respondents/plaintiffs for a preliminary decree dividing the suit schedule property by metes and bounds and for allotment and separate possession of 1/5th share to each of the respondents/plaintiffs. The suit schedule comprised an agricultural land admeasuring Ac.4.30 guntas in Survey Nos.103, 104 and 105 of Pasumamla Village, Hayathnagar Mandal, Ranga Reddy District.

The respondents/plaintiffs are the daughters of late Mohd. Azeemuddin. Respondents 6 to 9/defendants 1 to 4 are the sons of late Mohd. Azeemuddin. The petitioner/defendant 5 claims to be the owner of the suit schedule property, being the successor-in-interest of the vendee under the registered sale deed dated 10.02.1997, bearing Document No.1842 of 2000, executed by late Mohd. Azeemuddin along with respondents 6 to 9/defendants 1 to 4.

The plea of the petitioner/defendant 5 in the subject I.A. was that as per Muslim Law, the respondents/plaintiffs had no right to claim any

interest in or partition of the suit schedule property, which had already been sold by their father during his lifetime along with their brothers.

Perusal of the order under revision reflects that the trial Court was of the opinion that the petitioner/defendant 5 had not taken steps since the year 2007 or at least after it filed its written statement on 06.09.2007 and therefore, filing of such an application after ten years could not be countenanced. The trial Court further opined that it was not for the petitioner/defendant 5 to state as to whether there was a cause of action for the filing of the suit and that it would be open to it to elicit the relevant information during the cross-examination of witnesses instead of creating hurdles by filing petitions. It is on this ground that the trial Court dismissed the I.A.

By order dated 09.11.2018, this Court granted interim stay of further proceedings in the suit.

In **HAKIM RAHMAN BUX V/s. MUHAMMAD MAHMOOD HASSAN**¹, it was held that upon the death of a Muhammadan, his estate would devolve upon his heirs at the moment of his death and the heirs would succeed to such estate as tenants-in-common in specific shares.

As per Muslim Law, inheritance opens up only after the death of a Muslim. No person may be an heir of a living Muslim person. Therefore, unless a Muslim person dies, his heirs have no interest in his properties. The concept of right by birth is alien to Muslim Law. Whenever a Muslim dies, his property, whether acquired by him during his lifetime or inherited from his ancestors, can be inherited by his legal heirs. The question of inheritance of the property in Muslim Law arises only after the death of the owner. Any child born into a Muslim family does not get a right to

¹ AIR 1957 PATNA 559

property on birth. In fact, no such person holds any right to become even a legal heir and therefore, holds no right till the death of the ancestor who owns the property. Under Muslim Law, a daughter would become the absolute owner of whatever property she inherits at the stage the inheritance opens up. Therefore, it is only upon the death of the owner that the daughter's right to inherit would open up and in the event the property owned by the father is sold during his lifetime, no property would remain to be inherited by the daughter of such Muslim owner.

In *GULAM ABBAS V/ s. HAJI KAYYUM ALI*², the Supreme Court made it clear that renunciation by an expectant heir during the life-time of his ancestor, a Muslim, is not valid or enforceable against him after the vesting of the inheritance, because bare renunciation of an expectation to inherit cannot bind the expectant heir's conduct in future. The Supreme Court observed that there cannot be renunciation of a right which is inchoate or incomplete so long as it remains in that state and it would not be correct to speak of any right of inheritance before it arises by the death of the predecessor who could have, during his lifetime, deprived the prospective heir of his expectation entirely, by disposition inter vivos. This decision also makes it clear that during the father's lifetime, the heir has only a chance or expectation of inheritance and no further.

Sri Seetharam Reddy, learned counsel, does not dispute the settled legal position that as per Muslim Law, the children of a Muslim would have no rights in the property owned by him, during his lifetime. Therefore, the respondents/plaintiffs had no right to seek partition of the property owned by their father during his lifetime. It is also not disputed by Sri Seetharam Reddy, learned counsel, that the father of the respondents/plaintiffs

² (1973) 1 SCC 1

executed the registered sale deed dated 10.02.1997, bearing Document No.1842 of 2000, during his lifetime. It may also be noted that the suit schedule comprises only the property owned by the father of the respondents/plaintiffs which was sold under the said registered sale deed.

The trial Court was in error in holding that an application under Order 7 Rule 11 CPC has to be filed at the initial stage and that the delay on the part of the petitioner/defendant 5 in filing such an application would be fatal. It is well settled that an application for rejection of the plaint under Order 7 Rule 11 CPC can be filed at any stage of the suit (See R.K.ROJA V/ s. U.S.RAYUDU³).

This being the situation, as it is also admitted by Sri Seetharam Reddy, learned counsel, that the respondents/plaintiffs did not even seek cancellation of the registered sale deed dated 10.02.1997, bearing Document No.1842 of 2000, they have no right whatsoever to seek partition of the property belonging to their late father which was sold by him during his lifetime. They, admittedly, did not have any right in the said property during his lifetime and as he sold the said property under a registered sale deed which was filed by the respondents/plaintiffs themselves along with the amended plaint, they had no right to sue for partition thereof. The suit, in its very inception, was therefore utterly misconceived. All the more so, when they did not even seek cancellation of the said registered sale deed on any ground.

Be it noted that in T.ARI VANDANDAM V/ s. T.V.SATYAPAL⁴, the Supreme Court observed that the trial Court must remember that if on a meaningful – not formal – reading of the plaint, it is manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue,

³ (2016) 14 SCC 275

⁴ AIR 1977 SC 2421

the trial Court should exercise power under Order 7 Rule 11 CPC, taking care to see that the ground mentioned therein is fulfilled.

The trial Court therefore grievously erred in not entertaining and acting upon the application filed by the petitioner/defendant 5 under Order 7 Rule 11 CPC as there was no cause of action for the suit, clearly attracting the provisions of Order 7 Rule 11(a) CPC.

The civil revision petition is accordingly allowed setting aside the order under revision and allowing I.A.No.79 of 2018 filed by the petitioner/defendant 5 in O.S.No.1556 of 2007. In consequence, the suit shall stand dismissed as being bereft of cause of action.

Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

21st DECEMBER, 2018

Sv

SANJAY KUMAR, J

