

**The Hon'ble Sri Justice M.Satyanarayana Murthy**

**Civil Revision Petition No.6742 of 2017**

**Order:**

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging Order, dated 04.10.2017, in IA.No.100 of 2017 in OS.No.108 of 2017, on the file of the VII Junior Civil Judge, City Civil Court, Hyderabad.

The respondent filed the above suit for perpetual injunction restraining the petitioners herein, henchmen and agents from alienating and changing the nature of the suit schedule property bearing House No.17-2-1051 admeasuring 110 square yards out of 205 square yards situated at Rein Bazaar, Hyderabad, which is more fully described in the schedule annexed to the plaint.

The respondent claims that she entered into an agreement of sale in respect of the suit schedule property, on 31.10.2016, with petitioner No.1 for a sum of Rs.24,20,000/- and paid a sum of Rs.5 lakhs towards advance. Subsequently, when petitioner No.1 was dodging the matter on one pretext or the other, she issued notice, dated

01.12.2016, demanding petitioner No.1 to execute a registered sale deed by receiving the balance sale consideration. The petitioners did not comply with the same. On the other hand, they are making an attempt to alienate the suit schedule property. Therefore, the respondent filed the above suit.

The petitioners filed the Interlocutory Application (IA) under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC), to reject the plaint on the ground that the respondent being the agreement holder is not entitled to claim perpetual injunction in view of the bar under Section 41(h) of the Specific Relief Act, 1963 (for short 'the 1963 Act'), and that the agreement is compulsorily registerable under Section 17(1)(g) read with Section 49 of the Indian Registration Act, 1908 (for short 'the 1908 Act').

Earlier, the trial Court passed an order on 10.03.2017, which was set aside by this Court by Order, dated 29.06.2017, in Civil Revision Petition No.2865 of 2017 and the matter was remanded to the trial Court with the direction to decide the maintainability of the plaint with reference to Section 41(h) of the 1963 Act and Section 17(1)(g) of the

1908 Act. On remand, the trial Court restored the petition to its original number in Interlocutory Application register. After hearing the Counsel for both the petitioners and the respondent, the trial Court passed the impugned order wherein it has held that the admissibility of the document can be postponed till trial by applying the principle laid down in **Bipin Shantilal Panchal vs. State of Gujarat and another**<sup>1</sup> and that on that ground alone, the plaint cannot be rejected. The trial Court has also referred to Order VII Rule 11 CPC regarding non-disclosure of the cause of action in the plaint and placed reliance on the judgment of the Apex Court in **Om Aggarwal vs. Haryana Financial Corporation and others**<sup>2</sup>. However, the trial Court did not record any finding as to the entitlement of the respondent to claim relief in view of the bar under Section 41(h) of the 1963 Act and dismissed the IA. Aggrieved by the said order, the present Civil Revision Petition is filed by the petitioners by reiterating the grounds urged before the trial Court.

During the hearing, the learned Counsel for the petitioners contended that Section 41(h) of the 1963 Act

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<sup>1</sup> (2001) 3 SCC 1

<sup>2</sup> 2015 (3) ALT 53 (SC)

bars the respondent/plaintiff from claiming perpetual injunction when equally efficacious remedy is available to her and that therefore, the plaint is liable to be rejected. In support of his submission, he has also placed reliance on the judgments of the Bombay High Court in **Abdul Vahid vs. Manish Hansraj Chandaria**<sup>3</sup> and **Satish Bahadur vs. Hans Raj and others**<sup>4</sup> wherein it was held that the plaintiff therein was not entitled to claim the relief of perpetual injunction in view of the bar under Section 41(h) of the 1963 Act.

Despite service of notice, none appeared for the respondent before this Court.

Now, the questions that arise for consideration in this Civil Revision Petition are,

- (i) Whether the plaint is liable to be rejected in view of the bar under Section 41(h) of the 1963 Act and whether Clause (d) of Order VII Rule 11 CPC includes both statute law and judge made law ?
- (ii) Whether the plaint disclosed cause of action for filing the suit, if not the same is liable to be rejected ?

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<sup>3</sup> LAWS(BOM) 2012 2 48

<sup>4</sup> AIR 1980 Punjab and Haryana 351

**Point No.1:**

Admittedly, the suit was filed for perpetual injunction by the respondent based on an agreement of sale, dated 31.10.2016, and the same is not a possessory agreement of sale. However, the petitioner claimed the relief of perpetual injunction. The basis for the respondent's claim is the unregistered agreement of sale. Section 41 of the 1963 Act deals with the circumstances where a permanent injunction can be refused. Clause (h) thereof makes it clear that the Court can refuse grant of perpetual injunction when equally efficacious relief can be obtained by any other usual mode of proceeding except in case of breach of trust.

The law declared by the Bombay High Court in **Abdul Wahid vs. Manish Hansraj Chandaria and Satish Bahadur vs. Hans Raj and others** (3 and 4 supra) to the effect that the plaintiff therein was not entitled to claim the relief of perpetual injunction in view of the bar under Section 41 (h) of the 1963 has no quarrel though they are not binding precedents. The Apex Court in **Sunil Kumar vs. Ram Prakash**<sup>5</sup> held that when equally efficacious relief is

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<sup>5</sup> AIR 1988 SC 576

obtainable in any other mode or proceeding, injunction cannot be granted except in case of breach of trust. Therefore, in view of the statutory bar under Section 41(h) of the 1963 Act, the respondent is disentitled to claim the relief of perpetual injunction.

In **Bhargavi Constructions vs. Kothakapu Muthyam Reddy**<sup>6</sup>, the Apex Court had an occasion to deal with the question whether the expression "law" occurring in clause (d) of Rule 11 of Order VII of the CPC includes "judicial decisions of the Apex Court". While interpreting the same, the Apex Court held that the law includes not only legislative enactments but also judicial precedents and that an authoritative judgment of the Courts including higher judiciary is also law.

In the present case, as per the law declared by the Apex Court in **Sunil Kumar vs. Ram Prakash** (5 supra), the respondent is disentitled to claim perpetual injunction and in view of Order VII Rule 11 (d) CPC, which includes both statute, legislative enactment and the precedents, the plaint can be rejected.

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<sup>6</sup> JT 2017 (8) SC 586

Though the trial Court discussed about the inadmissibility of document in view of the bar under Section 49 of the 1908 Act, it did not advert to Section 41(h) of the 1963 Act, which disentitles the respondent to claim perpetual injunction. Despite the direction issued by this Court in the earlier CRP, the trial Court committed a grave error in dismissing the petition.

As discussed above, in view of the law laid down by the Apex Court in **Sunil Kumar vs. Ram Prakash** (5 supra) and by the Bombay High Court in **Abdul Vahid vs. Manish Hansraj Chandaria** and **Satish Bahadur vs. Hans Raj and others** (3 and 4 supra) and in view of the bar under Section 41(h) of the 1963 Act, the petitioner is disentitled to claim perpetual injunction based on the unregistered agreement of sale, dated 31.10.2016. Therefore, the plaint is liable to be rejected on this ground alone. Accordingly, this point is answered.

**Point No.2:**

The other ground raised by the learned Counsel for the petitioners is that the plaint does not disclose cause of action

and hence, the same is liable to be rejected under Order VII Rule 11 (a) CPC.

From a plain reading of Order VII Rule 11 CPC, it is clear that under Clause (a) thereof, a plaint can be rejected, if, from its plain reading, it does not disclose any cause of action. Cause of action is a bundle of facts, which gives rise to a cause to file a suit or proceeding against the other. The word 'cause of action' was not defined anywhere in CPC. But, it can be said to be a cause, which gives rise to file a suit *i.e.*, to claim remedy in the Court. Non-disclosure of cause of action in the plaint is a ground to reject the plaint, but the 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 CPC. On a bare look at the plaint, it discloses cause of action. When the plaint discloses cause of action, the Court cannot exercise power to reject plaint under Order VII Rule 11 CPC. On this ground, the plaint cannot be rejected. Accordingly, this point is answered.

In view of my foregoing discussion, the plaint is liable to be rejected under Section 41(h) of the 1963 Act and the trial Court has committed an error in dismissing the IA.

In the result, Order, dated 04-10-2017, in IA.No.100 of 2017 in OS.No.108 of 2017, on the file of the VII Junior Civil Judge, City Civil Court, Hyderabad, is set aside and the Civil Revision Petition is allowed. Consequently, IA.No.100 of 2017 stands allowed.

As a sequel, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

**(M. Satyanarayana Murthy, J)**

**Dt: 24<sup>th</sup> January, 2018**  
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