

**In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra Pradesh**

A.S.No.1368 of 2017

Between:

N.Sagar

... Appellant

and

M.Rajeswara Rao and 2 others

... Respondents

Date of Judgment Pronounced: 03-04-2018

Submitted for Approval:

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice D.V.S.S.Somayajulu

1. Whether Reporters of Local newspapers may be allowed to see the judgments ? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment ? Yes/No

(C.V.Nagarjuna Reddy, J)

(D.V.S.S.Somayajulu, J)

* The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice D.V.S.S.Somayajulu

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! Counsel for the Appellant: Mr.M.V.Suresh

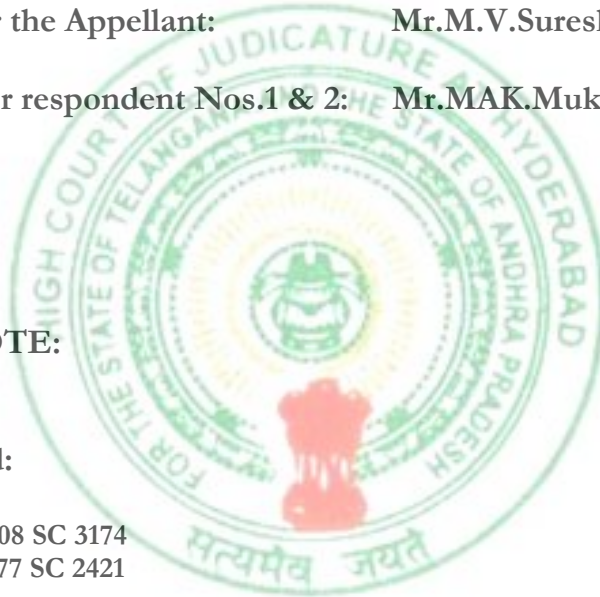
^ Counsel for respondent Nos.1 & 2: Mr.MAK.Mukheed

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? Cases cited:

AIR 2008 SC 3174
AIR 1977 SC 2421



The Hon'ble Sri Justice C.V.Nagarjuna Reddy
and
The Hon'ble Sri Justice D.V.S.S.Somayajulu

AS.No.1368 of 2017

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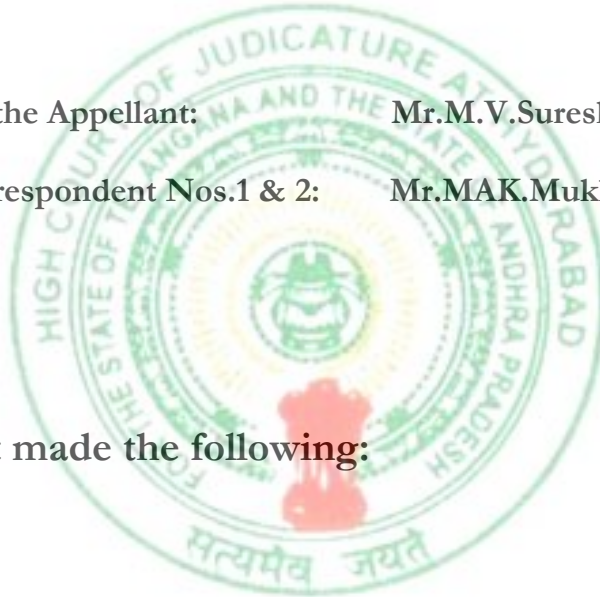
M.Rajeswara Rao and 2 others

... Respondents

Counsel for the Appellant: Mr.M.V.Suresh

Counsel for respondent Nos.1 & 2: Mr.MAK.Mukheed

The Court made the following:



Judgment: (per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

At the interlocutory stage, this Appeal is taken up for hearing and disposal with the consent of the learned Counsel for both parties.

This Appeal is filed against Order, dated 21-08-2017, in IA.No.3501 of 2010 in OS.No.413 of 2010 on the file of the XIV Additional District Judge, Ranga Reddy District at L.B.Nagar.

The appellant herein has filed the aforementioned suit for declaration of his title in respect of the house property bearing No.2-22-310/244C (Plot No.244/C) admeasuring 250 square yards in Survey Nos.184 to 189 situated in Addagutta Co-operative Housing Society Limited, Kukatpalli Village and Municipality, Balanagar Mandal, Ranga Reddy District (for short 'the subject property').

Respondent Nos.1 and 2 have filed IA.No.3501 of 2010 under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) for rejecting the plaint. In the affidavit filed in support of the said Application, it is *inter alia* stated that respondent Nos.1 & 2 have filed a suit for

injunction against the appellant and his father in the year 2008 *vide* OS.No.998 of 2008 on the file of the I Additional Senior Civil Judge, Ranga Reddy District, wherein Temporary Injunction was granted; that on verification of the record, they came to know that the mother of the appellant has filed a suit for injunction, claiming that she is the absolute owner of the subject property as the appellant has gifted the same to her *vide* registered gift deed bearing document No.3936/2008, dated 28-05-2008, by suppressing the pendency of OS.No.998 of 2008 wherein the appellant and his father were parties and have set up the claim that they are the absolute owners of the subject property; and that two years thereafter, the appellant has filed the present suit *i.e.*, OS.No.413 of 2010 for declaration of his title and injunction in respect of the said property. Respondent Nos.1 and 2 have further pleaded that as the appellant has executed the gift deed in respect of the subject property in favour of his mother- Smt.M.Pushpa, he ceased to be its owner and that therefore, the Court cannot declare him as the owner. Respondent Nos.1 and 2 have, accordingly, sought for rejection of the plaint.

The appellant has filed a counter-affidavit wherein he denied the allegation that he ceased to be the owner of the subject property, though he is somewhat evasive in meeting the allegation of his executing the gift deed by stating that the same is nonest in the eye of law.

Be that as it may, the Court below has accepted the plea of respondent Nos.1 and 2 that the appellant has executed the gift deed in favour of his mother and allowed IA.No.3501 of 2010 on the reasoning that having perused the contents of the registered gift deed, a copy of which was evidently produced before it by respondent Nos.1 and 2, it finds that the appellant has no right and title to file the suit.

Under Order VII Rule 11 CPC, the Court is empowered to reject the plaint on various grounds as envisaged under Clauses (a) to (f), which read as under:

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to

- supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
 - (e) where it is not filed in duplicate;
 - (f) where the plaintiff fails to comply with the provisions of rule 9”

Neither respondent Nos.1 and 2 have indicated in the IA as to under which specific clause, the present case falls nor the Court below has traced the IA to any particular clause among (a) to (f) of Rule 11 of Order VII CPC.

The salutary principle that has to be applied by the Court, while exercising power under Order VII Rule 11 CPC in order to hold whether the plaint is liable to be rejected or not, is that it shall only look into the plaint averments and nothing else. This position in law is evident from various judgments, one of which is **Kamala and Ors. Vs. K.T.Eshwara Sa and Ors**¹. The relevant portion of the said judgment is extracted herein below:

“Order VII, Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order VII, Rule 11, in our opinion, should not be mixed up. Whereas

¹ AIR 2008 SC 3174

in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order VII, Rule 11 of the Code is the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order VII, Rule 11 of the Code is one, Order XIV, Rule 2 is another.” (Emphasis is ours)

The order of the lower Court shows that it has not based its decision on the plaint averments only. On the contrary, it has looked into the material produced by respondent Nos.1 and 2 *viz*, the gift deed. Such an approach on the part of the lower Court runs contrary to the settled legal position as discussed above. The question, whether the appellant was the lawful owner of the subject property when the suit was filed or not requires to be adjudicated based on the evidence that may be adduced by both parties in the suit. The lower Court cannot short circuit the proceedings and non-suit the plaintiff based on material other than plaint averments purporting to exercise its jurisdiction under Order VII Rule 11 CPC.

The Judgment in **T.Arivandandam vs. T.V.Satyapal and another**² relied upon by Mr.M.A.K.Mukheed, learned Counsel for respondent Nos.1 and 2, is of no assistance to his clients, for, the said judgment was rendered based on the plaint averments themselves and not on any extraneous material outside the plaint.

For the aforementioned reasons, the Order under Appeal is not sustainable and the same is, accordingly, set aside. The Appeal is allowed and OS.No.413 of 2010 is restored to file for adjudication by conducting trial by the lower Court.

As a sequel, IA.No.3 of 2017, filed by the appellant for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(D.V.S.S.Somayajulu, J)

Date: 03-04-2018

Note:
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² AIR 1977 SC 2421

