

**THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO
AND
THE HONOURABLE SRI JUSTICE T. VINOD KUMAR**

A.S. NO.454 OF 2019

JUDGMENT: (Per Hon'ble Sri Justice M.S. Ramachandra Rao)

This appeal is filed under Section 96 of the Civil Procedure Code challenging the order dt.02.05.2019 in I.A. No.108 of 2019 rejecting the plaint presented by the appellant/plaintiff in O.S. No.537 of 2018 on the file of II Additional District Judge, Ranga Reddy District at L.B. Nagar.

The appellant's plea in the plaint

2. In the plaint, the appellant had contended that he was born on 02.1.1999 and attained majority on 02.1.2017; that the suit schedule property was gifted to him by his paternal grand mother/1st respondent/1st defendant through a registered deed of gift dt.13.02.2003, when he was four years old, out of love and affection for him; that the document recited that possession was given to the appellant/plaintiff; that it was an absolute gift of immovable property to him with absolute rights and that the said gift was revoked on 10.12.2004 by 1st respondent which was impermissible under law.

3. He contended that the 1st respondent then executed a Development Agreement-cum-GPA in favour of 2nd respondent/2nd defendant on 18.01.2008 conferring on the 2nd respondent rights in respect of the suit schedule property of which the appellant was the owner, including the right to develop the said property and the said document was

totally invalid and ineffective, since the 1st respondent had no right in the property on the date of its execution.

4. He further contended that his father (3rd respondent/3rd defendant) with whom his relationship was estranged, purporting to act as next friend filed O.S. No.1750 of 2015 before the VIII Additional Senior Civil Judge, Ranga Reddy District stating that the revocation of the gift deed by the 1st respondent on 10.12.2004 was not legal and binding on the appellant; that the said suit was filed to defeat the rights of the appellant by respondents 1 to 3 and was a collusive suit; that the 3rd respondent had acted beyond the powers conferred on him under Section 8 of the Hindu Minority and Guardianship Act, 1956; that a compromise decree came to be passed in the said suit on 13.01.2016 whereby the 3rd respondent entered into compromise with the respondents 1 and 2 affirming the rights claimed by them with respect to the property gifted to him by the respondent and granting to the appellant a fraction of a built up area in his own property.

5. He contended that the said compromise decree is liable to be set aside on the ground that it seeks to bind a minor though in law the minor is not bound thereby, and the said compromise decree was entirely against his interest as a minor and he is sought to be deprived of his own property and the profits that he would acquire on development of the property.

6. He sought the following reliefs:

(a). declare the plaintiff's right, title and interest over the suit schedule property by virtue of registered Gift Settlement Deed, dt.13.02.2003 bearing document No.976/2003 executed by defendant No.1 in his favour in respect of suit schedule property.

(b). Consequentially to cancel the Revocation of Gift Deed dt.10.12.2004 bearing document No.9470/2004 executed by defendant No.1 revoking the Gift Settlement Deed, dt.13.02.2003 bearing document No.976/2003 executed by defendant No.1 in favour of the plaintiff as the same is illegal, null and void.

(c). To declare that the compromise decree dt.13.01.2016 passed in O.S. No.1750 of 2015 on the file of VIII Senior Civil Judge, Ranga Reddy District at L.B. Nagar is not binding on the plaintiff.

(d). Consequentially to declare the Development Agreement-cum-General Power of Attorney bearing document No.2735/2008, dt.18.01.2008 executed by defendant No.1 in favour of defendant No.2 in respect of the Suit Schedule Property as illegal, null and void and not binding on the plaintiff.

(e). Consequentially to declare Deed of Assignment-cum-Development Agreement-cum-General Power of Attorney, being document No.2558/2016, dt.06.04.2016 executed by defendant No.1 being represented by her Development Agreement-cum-GPA Holder defendant No.2 in favour of defendant No.4 in respect of suit schedule property as illegal, null and void and not binding on the plaintiff.

(f). To direct the defendant Nos.2 and 4 to deliver physical possession of the suit schedule property to the plaintiff.

(g). To grant perpetual injunction against the defendant No.2 and 4 restraining them from interfering with the peaceful possession and enjoyment of suit schedule property.

(h). To award cost of the suit.

(i). To grant such other relief or reliefs as the Hon'ble Court may deem fit and proper in the circumstances of the case."

I.A. No.108 of 2019 filed by 2nd respondent under Or.VII Rule 11 to reject the plaint

7. The 2nd respondent/2nd defendant then filed I.A. No.108 of 2019 in O.S. No.537 of 2019 to reject the plaint of the appellant *inter alia*

contending that the appellant was a citizen of United States of America by birth, that he was not a citizen of India and any capital amount transactions involving acquisition of immovable properties in India by person resident outside India are governed by the Foreign Exchange Management Act, 1999.

8. It alleged that under certain Regulations issued under the said Act, he can only acquire immovable property other than the agricultural land/farm house/plantation by way of gift from a person resident in India. It was contended that the very gift executed by the 1st respondent in favour of the appellant on 13.02.2003 was thus void in law being contrary to the said Regulation.

9. It is also contended that under Order 23 Rule 3-A CPC, no suit shall lie to set aside the compromise decree dt.13.01.2016 in O.S. No.1750 of 2015 on the ground that the compromise on which the decree was based was not lawful.

10. It was also contended that the 3rd respondent who is the father and natural guardian of the appellant had represented the appellant in the above suit and while passing the compromise decree, the Court was conscious that the appellant was a minor and that his interest was secured.

11. It was thus contended that the suit itself was not maintainable and so the appeal should be rejected on the ground that reliefs sought by the appellant was barred by law.

The Counter of appellant to the I.A.108/2019

12. Counter-affidavit was filed by GPA holder of the appellant opposing this application.

13. It was contended in the counter-affidavit that relief of declaration of title to immovable property can only be granted by a civil Court and the plaint cannot be said to be barred by any law.

14. It is contended that Order XXIII Rule 3A is not attracted to a compromise decree when the appellant became a major and realized that fraud was played on him.

15. It was contended that in an application for rejection of plaint only the allegations contained in the plaint and the documents appended to it only can be looked into and the defence of the respondents cannot be taken into consideration at all.

16. It was pointed out that the mother of the appellant was divorced from the 3rd respondent 7 years back and the 3rd respondent was also denied custody of the appellant and the 3rd respondent cannot be said to be a guardian of the appellant's interests in O.S. No.1750 of 2015.

The Order dt.2.5.2019 in I.A.No.108 of 2019

17. By order dt.02.05.2019, the Court below allowed I.A. No.108 of 2019.

18. It referred to the contentions of both sides as well as the case law and took the view that though the revocation of the gift is bad in law, it was, in fact, void *abinitio* due to FEMA Rules; consequently, the 1st

respondent was the absolute owner of the property; since she continued to be in possession of the same irrespective of the gift deed, she was competent to execute the Development Agreement in favour of the 2nd respondent as her title was not divested inspite of execution of gift deed in favour of the appellant when he was a minor.

19. It also held that in O.S. No.1750 of 2015, a petition was filed under rule 32 of the civil Rules of practice by respondent no.3 seeking permission to represent the appellant, who was a minor, and it was allowed by the Court. It observed that the interests of the appellant was well guarded by the terms of the compromise.

20. It also held that Order XXIII Rule 3A, any compromise decree can be questioned on the ground of fraud in a Court where compromise decree was passed or by preferring an appeal, but not in any other Court and so the suit before the II Additional District Judge, Ranga Reddy District was not maintainable and is barred.

The Present Appeal

21. Assailing the same, this appeal is filed.

Contentions of Counsel for the Appellant

22. Counsel for the appellant contended that the Court below ignored Order XXXII of Civil Procedure Code and in particular Order XXXII Rule 3A CPC; and that after the introduction in 1977 of Order XXXII Rule 3A if the next friend of a minor has an adverse interest to that of the minor and the minor is prejudiced by reason of such adverse interest, the decree passed in the former suit may be set aside.

23. It is also contended that under Order XXXII Rule 4 CPC, the Court had not recognized the 3rd respondent to be the next friend of the appellant in O.S. No.1750 of 2015 and there is no such order passed by the said Court recognizing him as the next friend of the minor/appellant at that point of time; and to Order XXXII Rule 7 which mandates that no next friend or guardian for a suit was, without leave of the Court, expressly recording in the proceedings, enter into any compromise on behalf of a minor with reference to the suit in which he acts as a next friend or guardian.

24. Reference is also made to the decree of divorce obtained on 02.09.2008 by the mother of the appellant against the 3rd respondent dissolving their marriage and it is contended that *prima facie* the 3rd respondent had adverse interest towards the appellant after the said divorce decree was passed; and such adverse interest continued at the time of filing of O.S. No.1750 of 2015 by the 3rd respondent before the VIII Senior Civil Judge, Ranga Reddy District.

25. Reference is also made by the Counsel for the appellant to Section 8(3) of the Hindu Minority and Guardianship Act, 1956 which provides that any disposal of any immovable property by a natural guardian in contravention of sub-section (1) of sub-section (2) of Section 8 is voidable at the instance of the minor or any person claiming under him.

Contentions of Counsel for the Respondents

26. Sri E. Ajay Reddy, learned counsel appearing for the Respondent Nos.1 to 3 and Sri P. Venkat Reddy, learned counsel

appearing for the 4th respondent strongly refuted the said contentions and supported the order passed by the Court below.

The Consideration by the Court

27. The parameters to be followed by the Court while considering an application to reject a plaint under Or.VII Rule 11 CPC are well settled. While considering the question of rejection of plaint, only the averments in the plaint and the documents filed along with the plaint have to be looked into and the defence of the defendant cannot be looked into.

28. In **Saleem Bhai v. State of Maharashtra**¹, the Supreme Court explained the manner of exercise of jurisdiction under Order VII Rule 11 CPC in the following terms :

“A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage....” (emphasis supplied)

29. This principle was reiterated by the Supreme Court in **Madanuri Sri Rama Chandra Murthy v. Syed Jalal**² in the following terms:

“7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly

¹ (2003) 1 SCC 557

² (2017) 13 SCC 174

vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage." (emphasis supplied)

30. Keeping these principles in mind, we shall consider the contentions of the parties.

31. From the facts narrated above, the appellant was born on 02.01.1999 ; the gift deed executed by the 1st respondent in favour of the appellant on 13.02.2003, when the appellant was about four years old; he attained majority on 02.01.2017, and then filed O.S. No.537 of 2018 in his own capacity for the above reliefs.

32. The gift was not a conditional gift and *prima facie* it would vest title to the property in the appellant and could not have been unilaterally revoked by the 1st respondent. The trial Court in the impugned judgment has also agreed that the revocation of the gift is bad in law.

33. It is the defense of the respondents that because of certain notifications issued by the RBI under the Foreign Exchange Management Act, such a gift is not valid in law.

34. This defense of the respondents cannot be gone into at the time of considering an application for rejection of plaint and this aspect has to be gone into after trial of the suit at the time of deciding it. Therefore the trial court could not have rejected the plaint on this ground.

35. It is important to note that Order XXXII CPC deals with suits by or against Minors and Persons of Unsound Mind. It requires that every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend (Order XXXII Rule 1 CPC); and under Order XXXII Rule 3, the Court is required to appoint a proper person to be a guardian for such a suit on an application to be made on behalf of the minor.

36. Order XXXII Rule 3A states as under:

“3-A Decree against minor not to be set aside unless prejudice has been caused to his interests:-

- (1) No decree passed against a minor shall be set aside merely on the ground that the next friend or guardian for the suit of the minor had an interest in the subject-matter of the suit adverse to that of the minor, but the fact that by reason of such adverse interest of the next friend or guardian for the suit, prejudice has been caused to the interest of the minor, shall be a ground for setting aside the decree.*
- (2) Nothing in this rule shall preclude the minor from obtaining any relief available under any law by reason of the misconduct or gross negligence on the part of the next friend or guardian for the suit resulting in prejudice to the interests of the minor.”*

37. The objects and reasons for introducing this provision in 1977 was that there was a divergence of opinion as to whether a minor, who is properly represented in a suit, can subsequently institute a suit to set aside a decree passed against him in the former suit. Rule 3-A of Order XXXII C.P.C. was inserted to clarify that *where the next friend of the minor has an adverse interest to that of the minor and the minor is prejudiced by reason of such adverse interest, the decree passed in the former suit may be set aside.* (Gazette of India, Ext., dt.08-04-1974, Pt.II, Section 2, page 330).

38. Therefore the plea of the counsel for respondents that it is not open to the appellant, who was minor at the time of compromise of O.S.No.1750 of 2015, to file the present suit, *prima facie* appears to be incorrect.

39. Further, Order XXXII Rule 7 CPC deals with entering into of a compromise by next friend or guardian of a minor in a suit filed on behalf of the minor. The said provision states :

“(1) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

(1-A) An application for leave under sub-rule (1) shall be accompanied by an affidavit of the next friend or the guardian for the suit, as the case may be, and also, if the minor is represented by a pleader, by the certificate of the pleader to the effect that the agreement or compromise proposed is, in his opinion, for the benefit of the minor.

Provided that the opinion so expressed, whether in the affidavit or in the certificate shall not preclude the Court from examining whether the agreement or compromise proposed is for the benefit of the minor.

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor.”

40. In the instant case, it appears that only an application under Rule 32 of Civil Rules of Practice was filed by 3rd respondent in O.S.No.1750 of 2015 and there is no material to show that he had obtained leave of the Court under Order XXXII Rule 7(1) C.P.C. to enter into the compromise in that suit.

41. Also, no certificate of the advocate engaged by the 3rd respondent in O.S.No.1750 of 2015 stating that the compromise entered into by the respondent Nos.1 to 3 in O.S.No.1750 of 2015, was in his opinion, for the benefit of the appellant; and there is also nothing to show that while recording the compromise, *prima facie*, the Court had given a finding that the proposed compromise was for the benefit of the appellant.

42. Since one of the main issues arising for consideration in the instant suit is with regard to the validity of the compromise decree dt.13.01.2016 in O.S. No.1750 of 2015 passed by the VIII Senior Civil Judge, Ranga Reddy District at L.B. Nagar, at which point of time, it is undisputed that the appellant was a minor, it was incumbent on the part of the Court below to take note of Order XXXII Rules 1 to 7 C.P.C. and also consider its impact on the contentions raised by the parties, but it failed to do so.

43. We are, therefore, of the opinion that non-consideration of the said provision of law has seriously vitiated the decision of the Court below and warrants setting aside the impugned judgment of the Court below necessitating a remand of the I.A. No.108 of 2019 to it for fresh consideration in accordance with law.

44. Accordingly, this appeal is allowed; judgment dt.02.05.2019 in I.A. No.108 of 2019 in O.S. No.537 of 2018 on the file of II Additional District Judge, Ranga Reddy District at L.B. Nagar is set aside; and the said I.A. is remanded back to the said Court for consideration afresh in accordance with law within eight weeks. No costs.

45. As a sequel, miscellaneous petitions pending if any in these Revisions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE T. VINOD KUMAR

Date: 01-10-2019

MRKR