

THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU
C.M.A.No.333 OF 2022

ORDER:

This appeal has been preferred by the appellant who is the plaintiff in O.S.No.34 of 2022 on the file of Senior Civil Judge, Sangareddy. This appeal has been filed against the order and decree of the trial Court in I.A.No.505 of 2022 filed under Order 7 Rule 11 C.P.C., whereunder the request of the respondents for rejection of the plaint was allowed.

2. As could be seen from the record, the appellant/plaintiff has filed O.S.No.34 of 2022 for declaration of two sale deeds executed by the defendant No.1 in favour of defendant Nos.2 and 3 as null and void, not binding on the plaintiff and sought for cancellation of those sale deeds. He has also sought for perpetual injunction against the respondent/defendants from interfering with his possession over one house property situated at Ramachandrapuram, which is shown as the suit schedule property. The respondent/defendants filed a

petition vide I.A.No.505 of 2022 under Order 7 Rule 11 C.P.C r/w Section 151 C.P.C., with a prayer to reject the suit filed by the appellant herein. As per the affidavit filed in support of the said application, it was their case that the appellant herein filed suit for declaration to declare the sale deeds executed by the 1st Respondent/1st Defendant in favour of R 2, R 3/D2 and D3 as null and void, not binding the plaintiff apart from grant of perpetual injunction. According to their claim, the suit filed by the appellant herein is not maintainable; he has no cause of action. They have also pleaded that the suit for cancellation of an instrument will be maintainable only when the same was filed by the party who has executed such a document. But, according to the plaint averments, the documents sought to be cancelled were not executed by the appellant. Therefore, the suit is barred by law. According to their claim before the trial Court, the suit is nothing but a vexatious suit filed to create hardship against the defendants.

3. The appellant herein opposed the said application, filed counter. The appellant/plaintiff has claimed that his paternal grandmother Smt. Sogra Begum was the absolute owner and possessor of the suit property, she constructed the said house in 1946 after obtaining permission from the then Jagirdar and was in possession of the property. During 1972 she has obtained permission from the Special Officer and constructed compound wall, and that he was in possession of the property after the death of his father.

4. He has further claimed in the counter that R1/D1 without disclosing the source of his title on the suit schedule property has executed two documents in favour of the remaining respondent/defendants, therefore according to the appellant the cause of action for filing the suit arose on the date on which the 1st respondent/defendant no.1 executed the said sale deeds, and he has further stated that the he filed the said suit for perpetual injunction to restrain the respondent/defendants from interfering with his possession and he has sought for dismissal of the petition. However the trail court has allowed the petition on

the ground that the appellant herein cannot seek for cancellation of the documents executed by R1/D1 in favour of R2 R3/D2 D3, the appellant has to file appropriate suit.

5. I have heard both parties.

6. Now the points that arose for consideration in the present appeal are,

1. Whether the plaint filed by the appellant herein is liable to be rejected under Order VII R 11 CPC?

2. Whether the order of the trial Court, rejecting the plaint can be set aside?

7. **POINT:**

The appellant having claimed absolute title and possession on the suit property not only sought for cancellation of the sale deeds, but also for perpetual injunction to restrain the respondent/defendants from interfering with his possession.

8. The trial Court having heard both parties, came to the conclusion that in view of Section 31 of Specific Relief Act, a written instrument is void or voidable against such

person and such person must have a reasonable apprehension that such instrument is left outstanding may cause serious injury, and as per section 34 of the Specific Relief Act that particular person is entitled to seek cancellation of the document and declaration of title. The Court below came to the conclusion that since the documents were executed by 1st defendant in favour of defendant Nos.2 and 3, it may not give right to the appellant/plaintiff for asking cancellation of the sale deeds and having held so, allowed the application filed by the respondent/defendant, and rejected the plaint.

9. Learned counsel for the appellant/plaintiff has submitted that two documents were executed by 1st respondent in favour of respondent/defendant No.2 and 3 respectively in respect of property absolutely owned by the appellant, and under the guise of those documents, the respondents wanted to encroach upon the schedule property, made attempt to interfere with the possession of the appellant/plaintiff. Therefore, the plaintiff has filed suit not only for the purpose of declaration, but also for

perpetual injunction to protect his possession. The court below having relied on Section 31 of Specific Relief Act was of the opinion that the appellant who is not an executant of the sale deeds cannot file a suit for cancellation of those sale deeds. Thereby, the suit is barred by law and rejected the plaint.

10. Learned counsel for the appellant relied on judgment between Sri Biswanath Banik and Another Vs. Smt. Sulanga Bose & Ors *reported in 2022 Live law (SC) 280*¹ and argued that while hearing the application under Order 7 Rule 11 C.P.C., the Court has to consider the entire plaint averment and cannot reject the plaint by reading few lines and ignoring other relevant part of the plaint.

11. In the above referred judgment, the Hon'ble Apex Court was pleased to observe that the plaint cannot be rejected partially, and while considering an application under Order VII Rule 11 CPC, the court has to go through the entire plaint averments and cannot reject the plaint by

¹ 2022 Live Law (SC) 280

reading only few lines/passages and ignoring the other relevant parts of the plaint. The Hon'ble Apex court was pleased to observe that when the plaintiff sought for permanent injunction the cause of action can be said to have arisen on the date on which the possession is sought to be disturbed if that be so, the suit for decree for perpetual injunction cannot be said to be barred by limitation.

12. The counsel had also relied on another judgment between Shaukathussain Mohammed Patel Vs. Khatunben Mohammedbhyai Polara *reported in 2019 (10) SCC 226*². In this judgment the Hon'ble Apex Court was pleased to observe that when it is averred in the plaint that the possession of the suit property was the plaintiff, Rejection of plaint is not justified.

13. While relying on another judgment between Kuldeep Singh Pathania Vs. Bikram Singh Jarya *reported in 2017 (5) SCC 345*³, the counsel sought for setting aside the order

² 2019 (10) SCC 226

³ 2017 (5) SCC 345

of the Court below and for restoration of the suit filed by the appellant herein. In this judgment, the Hon'ble Apex Court was pleased to observe that while deciding the petition under Order 7 Rule 11 C.P.C., the Court can see whether plaint or pleading of plaintiff constitute cause of action. Only pleadings of plaintiff form basis of decision of Court but not rebuttal made by the defendant or any material produced by the defendant for disposal of the application under Order 7 Rule 11 C.P.C.

14. In the case on hand as could be seen from the plaint averments it is the case of the Appellant that he is absolute owner of the suit schedule property and he is enjoying the possession of the same, and that the 1st respondent without any right and title executed two sale deeds in favour of the remaining two respondent/defendants and under the said documents they denied his title and are trying to obtain permission for raising some structures and tried to dispossess him from the suit property, therefore the suit was filed not only for the purpose of declaring those sale deeds as null and void but also for a perpetual

injunction to restrain the respondents from interfering with his possession over the suit property. In view of the contention of appellant in the above suit that on the basis of above referred sale deeds the respondent/defendant Nos.2 and 3 are trying to disposes him and trying to obtain permission for raising structures in his land. As such, he has got cause of action to file the suit. Therefore, in view of the above stated citations such a plaint cannot be rejected under Order VII Rule 11 CPC. Therefore, the order of the trail court is liable to be set aside.

15. In the result the appeal is allowed and the order of the trail Court rejecting the plaint is set aside. The trail Court shall restore the suit and proceed with the same as per procedure.

16. As a sequel, pending Miscellaneous Applications, if any, shall stand closed.

JUSTICE SAMBASIVA RAO NAIDU

Date:19.09.2022
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