

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

* * * *

CRP No. 1941 of 2021

Between:

R. SRI RAM KUMAR & ANOTHER

...Petitioners

&

ANIL LAKHWANI AND OTHERS

...Respondents

DATE OF JUDGMENT PRONOUNCED: 17-03-2022

SUBMITTED FOR APPROVAL:

1. Whether Reporters of local newspapers
may be allowed to see the Judgment?

Yes/No

2. Whether the copies of judgment may be
marked to Law Reporters/Journals

Yes/No

3. Whether Your Lordships wish to
see the fair copy of the Judgment?

Yes/No

A. RAJASHEKER REDDY, J

***THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY**

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> HEAD NOTE:

! Counsel for Petitioners: Sri Santosh for Sri K. Sharath

^Counsel for Respondents 1st, 3rd to 8th: Sri B. Mayur Reddy

? Cases referred

1. (1989) 3 SCC 433
2. (2006) 3 SCC 100
3. (2017) LAW SUIT SC 55
4. (2006) 5 SCC 658
5. (2021) SCC OnLine SC 764
6. (2020) 7 SCC 3662
7. (2004) 3 SCC 172
8. (1977) 4 SCC 467

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDYCRP No.1941 of 2021**ORDER::**

This civil revision petition is filed against the order dated 27-10-2021 passed in IA No.741 of 2018 in OS No.139 of 2018 by the VIII Addl. District Judge, Ranga Reddy District, at L.B. Nagar. Petitioners herein are defendants 17 and 18 in the suit. The parties hereinafter will be referred to as arrayed in the suit.

02. The case of the plaintiff-1st respondent and defendants 17 and 18-revision petitioners is Smt.Mummal Devi, who is the Grand-mother of plaintiff came to India as refugee with her two sons Phathumal Kanwarmal Lakhwani (elder son) and Vishandas Kanwarmal Lakhwani (younger son). Being a refugee migrated to India from Pakistan and such refugees were eligible to make claims before the Government of India for allotment of suitable land under the provisions of Displaced Persons (Compensation and Rehabilitation) Act, 1954, (in short, "1954 Act"), the elder son, Phathumal Kanwarmal Lakhwani made a

claim for grant of Sanad allotment under the provisions of 1954 Act. His claim was considered and allotted land to an extent of Ac.64.10 gts. in Sy.Nos.317, 329, 330, 332, 333 of Puppalguda village, Rajendranagar mandal, Ranga Reddy District, (in short, “suit schedule property”) by way of Sanad document dated 17-04-1968.

03. The Plaintiff and Defendant nos.1 to 7 are family members of Vishandas Kanwarmal Lahkwani (younger son) and thus they are jointly entitled to claim $\frac{1}{2}$ share in the suit schedule property for the reason the Sanad was allotted to elder son as Karta of Hindu Undivided Family. It has come on record that the suit schedule property was sold by the Phathumal Kanwarmal Lakhwani (elder son) through his GPA holder vide registered Document No.763/1968, dated 20-06-1968.

04. Suit OS No.139 of 2018 was filed for partition and separate possession of $\frac{1}{8}$ th share of the plaintiff-1st respondent herein based on Sanad document dated 17-04-1968. In the suit,

the younger son Vishnadas Kanwarmal Lakhwani is D-1 (since deceased), his wife is D-2, their sons D-3, D-4, D-5 and daughters D-6 & D-7. The Plaintiff as one of the sons of D-1 and D-2 has filed the suit. Defendants 8 to 13 are the wife and children of Phathumal Kanwarmal Lakhwani (elder son). Defendants 14 to 25 are the successors-in-title of A.Rama Swamy and K.Ramamurthy who had purchased the suit schedule property from the (elder son) thru his GPA holder.

05. The above IA filed by defendants 17 and 18, under Order VII, Rule 11 (a) & (d) of Code of Civil Procedure, 1908, to reject the plaint on the ground that it does not disclose cause of action in the suit and the suit is barred by law of limitation and not maintainable in view of the bar contained in Section 36 of 1954 Act, r/w. Section 6 of General Clauses Act, 1977, was dismissed, aggrieved thereby, present revision is filed.

06. Heard the learned counsel for the petitioners and the learned counsel for the respondents.

07. Learned counsel for the petitioners (defendants 17 and 18) contended:- *i)* that the land allotted under Sanad was granted to the elder son Phathumal Kanwarmal Lakhwani and the claim now being made after 50 years that the grant was in the nature of Karta of Hindu Undivided Family (HUF) is nothing but vexatious litigation; *ii)* that Sanad document is unambiguously clear that it was an individual grant and even otherwise any claims or disputes arising therefrom will have to be worked out under 1954 Act, which the legal heirs of younger son failed to do so; *iii)* that execution of the sale deed by the elder son thru his GPA holder in the year 1968 itself is notice to all stake holders including the heirs of the younger son, the sale deed being a public document; *iv)* that the relief sought in the suit is in the nature of declaration as to whether the Sanad allotment was a grant as Karta of HUF or it is an individual allotment, without seeking the relief of declaration and without there being any enforceable right in the suit schedule property, the suit for

partition and separate possession of share in the suit schedule property is impermissible and not maintainable; *v)* that Section 36 of 1954 Act excludes the jurisdiction of the civil Court and as such the suit is not maintainable even on that count; *vi)* that the relief for partition is sought as there is no limitation for seeking such a relief as suit is not maintainable under the provisions of 1954 Act and hopelessly barred under law of limitation; *vi)* that the plaint is cleverly drafted twisting the facts which is clear abuse of the legal process, which the Court below failed to identify in its enquiry in the IA filed Order VII, Rule 11 CPC and the impugned order is liable to be set aside.

08. Learned counsel for the respondents, on the other hand, contended:- *i)* that under Rule 19 of 1955 Rules, the question whether the family is joint or separate shall be determined with reference to status of the said family as on 14-08-1947 and each member of such family shall be deemed to be joint notwithstanding the fact that such member became separated

after said date and as such, both sons of Smt.Mummal Devi are legal heirs of the Sanad allotment and entitled to respective shares as per Hindu Law and hence the legal heirs of younger son filed the suit for partition of suit schedule property to the extent of their Half share; *ii)* that the land allotted to the elder son as Karta of HUF, the LRs of the elder son cannot claim it as an exclusive property of Phathumal Kanwarmal Lakhwani; *iii)* that the bar contained in Section 36 of the 1954 Act shall apply only when a civil proceeding is filed challenging the Sanad allotment, as there is no challenge to the Sanad, Section 36 of 1954 Act is inapplicable to the facts of the case; *iv)* that the Court below rightly dismissed the IA on the reasoning that the land allotted under Sanad to the elder son in his individual capacity or as Karta of HUF will have to be gone into in trial after adducing evidence by both the parties and as issues raised being mixed questions of law and fact needs to be decided at the time of trial, maintained the suit.

09. Having heard learned counsel for the parties, the point that arise for consideration is:-

Whether the plaint discloses cause of action and is not barred by limitation and not maintainable in view of the bar contained under Section 36 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, R/w. Section 6 of General Clauses Act and; whether the impugned order is sustainable in the facts and circumstances of the case.

10. The facts stated are self explanatory. The allotment of land (suit schedule property) under Sanad was issued in accordance with the elaborate procedure laid under the 1954 Act. The 1954 Act and the 1955 Rules framed thereunder encapsulate a comprehensive self contained code with respect to allotment of land to Refugees under the provisions therein and provide for finality to such allotment. Sections 22, 23, 24, 25 and 27 of the 1954 Act reads as under:-

22. Appeals to the Settlement Commissioner.

(1) Subject to the provisions of sub- section (2), any person aggrieved by an order of the Settlement Officer or a managing officer under this Act may, within thirty days from the date of the order, prefer an appeal to the Settlement Commissioner in such form and manner as may be prescribed: Provided that the Settlement Commissioner may entertain

the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) No appeal shall lie from an order of the Settlement Officer under section 5 if the difference between the amount of public dues as determined by the Settlement Officer and that as admitted by the applicant is less than one thousand rupees or such other amount not exceeding one thousand rupees as may be specified by the Central Government in this behalf, by notification in the Official Gazette.

(3) The Settlement Commissioner may, after hearing the appeal, confirm, vary or reverse the order appealed from and pass such order in relation thereto as he deems fit.

23. Appeals to the Chief Settlement Commissioner.

(1) Subject to the provisions of sub- section (2), any person aggrieved by an order of the Settlement Commissioner or the Additional Settlement Commissioner or an Assistant Settlement Commissioner or a managing corporation under this Act may, within thirty days from the date of the order, prefer an appeal to the Chief Settlement Commissioner in such form and manner as may be prescribed: Provided that the Chief Settlement Commissioner may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) No appeal shall lie from any order passed in appeal under section 22.

(3) The Chief Settlement Commissioner may, after hearing the appeal, confirm, vary or reverse the order appealed from and pass such order in relation thereto as he deems fit.

24. Power of revision of the Chief Settlement Commissioner.

(1) The Chief Settlement Commissioner may at any time call for the record of any proceeding under this Act in which a Settlement Officer, an Assistant Settlement Officer an Assistant Settlement Commissioner, a managing officer or a managing corporation has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit.

(2) Without prejudice to the generality of the foregoing power under sub-section (1), if the Chief Settlement Commissioner is satisfied that any order for payment of compensation to a displaced person or any lease or allotment granted to such a person has been obtained by him by

means of fraud, false representation or concealment of any material fact, then notwithstanding anything contained in this Act, the Chief Settlement Commissioner may pass an order directing that no compensation shall be paid to such a person or reducing the amount of compensation to be paid to him, or as the case may be, cancelling the lease or allotment granted to him; and if it is found that a displaced person has been paid compensation which is not payable to him, or which is in excess of the amount payable to him, such amount or excess, as the case may be, may, on a certificate issued by the Chief Settlement Commissioner, be recovered in the same manner as an arrear of land revenue.

(3) No order which prejudicially affects any person shall be passed under this section without giving him a reasonable opportunity of being heard.

(4) Any person aggrieved by any order made under sub- section (2), may, within thirty days of the date of the order, make an application for the revision of the order in such form and manner as may be prescribed to the Central Government and the Central Government may pass such order thereon as it thinks fit.

Section 25 - Review and amendment of orders

(1) Any person aggrieved by an order of the Settlement Officer under section 5, from which no appeal is allowed under section 22, may, within thirty days from the date of the order, make an application in such form and manner as may be prescribed, to the Settlement Officer for review of his order and the decision of the Settlement Officer on such application shall, subject to the provisions of section 24 and section 33, be final.

(2) Clerical or arithmetical mistakes in any order passed by an officer or authority under this Act or errors arising therein from any accidental slip or omission may, at any time, be corrected by such officer or authority or the successor-in-office of such officer or authority.

Section 27 - Finality of orders

Save as otherwise expressly provided in this Act, every order made by any officer or authority under this Act, including a managing corporation, shall be final and shall not be called in question in any court by way of an appeal or revision or in any original suit, application or execution proceeding.

11. The statutory scheme envisaged under the above provisions make it clear that allotment of land under the 1954 Act can only be challenged in the mode, time-line and method prescribed therein. Section 36 of the 1954 Act reads thus:-

Section 36 - Bar of jurisdiction:-*Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Central Government or any officer or authority appointed under this Act is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.*

12. Under Section 22 any person aggrieved by order of the Settlement Officer or Managing Officer, in this case Managing Officer, appeal lies to the Settlement Commissioner who after hearing the appeal may confirm, vary or reverse the order appealed. Under Section 23 from the order of Settlement Commissioner second appeal lies to Chief Settlement Commissioner who is vested with same powers as under Section 22. Under Section 24, the Chief Settlement Commissioner also has got the revisional power. Challenge to allotment can be made before the Chief Settlement Commissioner in revision under this

Section to cancel the allotment obtained by fraud, false representation or concealment of material facts. However, doctrine of principles of natural justice is included and it is necessary for the Chief Settlement Commissioner to afford opportunity of being heard to the affected person. Under sub-Section 4 thereof against the order passed by Chief Settlement Commissioner, revision lies to the Central Government. Section 25 provides for review of the order passed by the Settlement Officer under Section 5 where no further appeal lies under Section 22 or for correction of clerical or arithmetical mistakes in any order passed by an officer or authority under the 1954 Act. Section 27 speaks of finality of orders passed by any officer or authority under the Act save as otherwise provided in the Act, shall be final and cannot be called in question in any Court by way of an appeal or revision or suit. As remedies are provided under the scheme of the 1954 Act, civil Courts jurisdiction is barred. However if the authorities under the 1954 Act, act

without jurisdiction, then the bar would not be attracted, but in the case on hand, such is not the case of the plaintiff and he has no grievance as to the correctness or otherwise of the allotment of Sanad in favour of Phathumal Karwarmal Lakhwani the elder son on whatsoever grounds, except for seeking partition.

13. Section 36 bars the jurisdiction of civil Court in respect of any matters which the Authorities under the Act are empowered to determine and provide for a time bound resolution of any such issues upon issuance of Sanad. There is no challenge to the Sanad document dated 17-04-1968 by the plaintiff and his family members who claim to be the heirs of the younger son. The Sanad document dated 17-04-1968 reads as follows:-

“S A N A D

Whereas by the notification of the Government of India in the Ministry of Rehabilitation No.8III-4(6)55-1, dated 25th May, 1955 issued under Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, (44 of 1954) (hereinafter referred to as the said Act), the Central Government has acquired the evacuee property described in the Schedule to this Sanad (hereinafter referred to as the said Property).

AND WHEREAS the said property may be transferred to the said Phathumal, S/o.Kanwarmal of Hyderabad for the purpose of the compensation payable to him under the said Act.

THE PRESIDENT IS HEREBY PLEASED TO transfer the right, title and interest acquired by the Central Government in the said property to Shri Phathumal Kanwarmal (hereinafter referred to as the transferee) subject to the following terms and conditions:- (1) xxx (2)xxx (3)xxx (omitted)

Executed this day of 17th April, 1968 at Bombay by the Managing Officer, Bombay on behalf of the President.” (emphasis supplied)

14. From a reading of the Sanad dated 17-04-1968, goes to show that it was issued in favour of Phatumal Kanwarmal Lakhwani in his individual capacity with the Sanad attaining finality as there was no challenge thereto in any manner as prescribed under 1954 Act and the 1955 Rules made there under. There cannot be any enquiry or interpretation as regards the content and nature of conveyance of suit schedule property under the Sanad after 50 years of its allotment. The terms of Sanad clearly indicate that it conveys absolute title to the transferee i.e. Phathumal Kanwarmal Lakhwani and it could be cancelled only by the Authority which granted the Sanad under Sections 22, 23, 24 & 25 of the 1954 Act.

15. The plaintiff is seeking to reopen the nature of allotment of Sanad by way of suit for partition as there is no limitation for seeking

the relief of partition. The plaintiff did not seek any declaratory relief knowing fully well that it would be time barred as such the plaint is a clever drafting to maintain the suit if it is a suit for partition, though the subject matter has become *dead wood*.

16. In ***PUJARI VS. MADAN GOPAL***¹, the Hon'ble Supreme Court held that Sanad issued under 1954 Act conveys absolute title. The Sanad in this case was granted in favour of Phatumal Karwarmal Lakhwani under the provisions of 1954 Act and the 1955 Rules, conveys absolute title unto him alone. The plaintiff and defendants 2 to 7 who are the legal heirs of younger son do not have any cause of action to file the partition suit. Under Rule 85 of 1955 Rules, which reads as under:-

85 . Power of civil court - The Chief Settlement Commissioner , the Regional Settlement Commissioner and the Settlement Officer may for the purpose of deciding any dispute under Section 9 of the Act; (a) determine after summary enquiry the title to any property; (b) determine any dispute between joint or rival claimants and assess the share, if any, of each claimant in the compensation; (c) bring on record the legal representatives of a deceased claimant & (d) order consolidation of two or more cases which involve a common question of law or fact.

¹ (1989) 3 SCC 433)

states that in case of any disputes as to payment of compensation under Section 9 of 1954 Act, the authorities under the Act are vested with powers of the civil Court to decide any disputes of title issues of assessment and allocation of share between rival claimants.

17. The question as framed by the Court below in the impugned order as to whether the Sanad was issued to the elder son as Karta of HUF in his individual capacity or undivided family is to be decided at the time of trial is misconceived as any embarking upon such an enquiry dilutes the scheme of 1954 Act and 1955 Rules and allows indirectly what is directly barred by Law. The plaintiff has not questioned the Sanad nor the authority granting Sanad in favour of the elder son regardless of the fact that Sanad conveys absolute title in favour of elder son alone and nothing remains to be decided in the trial.

18. From the plaint averments taken on its face value, there is no prayer for the relief of declaration of right in plaintiff's favour. The plaintiff rely on the Sanad as the basis of his right, but the Sanad as it stands confers no right whatsoever on the plaintiff or his predecessors-in-interest. Without seeking the relief of declaration of

right in the property, consequential relief for partition of that property is not maintainable. The plaintiff without seeking appropriate relief and without having clear right to sue has filed the suit for partition by paying Rs.200/- Court fee after more than 50 years of issuance of Sanad and execution of the registered sale transaction vide Doc.No.763 of 1968 by the Sanad holder represented by his GPA holder in favour of the predecessors-in-title of the revision petitioners-defendants 17 and 18 without seeking the relief of cancellation of those sale deeds and consequential relief for recovery of possession of the land thereof.

19. Order VII, Rule 11 a) & d) of CPC reads as under:-

*“11. Rejection of plaint:--(a) where it does not disclose a cause of action;
 (b) xxx (omitted)
 (c) xxx (omitted)
 (d) where the suit appears from the statement in the plaint to be barred by any law:
 (e) xxx (omitted)
 (f) xxx (omitted)”*

The Court in an enquiry, in an application made under Order VII, Rule 11 a) & d) of CPC ensure that the plaint averments when taken at face value satisfy the requirement of presence of cause of action, even if the averments remotely suggests so, then the suit can proceed for

trial, but whenever on a reading of the plaint there is no cause of action on the face of material filed and does not give the plaintiff any right to sue, the plaint is liable to be rejected so that the parties are not sent to a long drawn process of trial as it will be a futile exercise with wastage of time, money, energy and the precious time of the Court. The enquiry under Order 7, Rule 11 of CPC is *litmus test* but not an empty formality.

20. Much reliance is placed on Rule 19 of 1955 Rules to argue that allotment of land under Sanad even in individual capacity means as if it were for a joint family, for the purposes of allotment. Rule 19 of 1955 Rules which reads as under:-

“19. Special provisions for payment of compensation to joint families -(1) Where a claim related to properties left by the members of an undivided Hindu Family in West Pakistan (hereinafter referred to as the joint family) compensation shall be computed in the manner hereinafter provided in this rule . (2) Where on the 26th September , 1955 (hereinafter referred to as the relevant date) the joint family consisted of :-

(a) two or three members entitled to claim partition, the compensation payable to such family shall be computed by dividing the verified claim into two equal shares and calculating the compensation separately on each such share.” (emphasis supplied)

Rule 19 only deals with computation *i.e.* quantification of extent of allotment and is a guiding principle for quantification of allotment in particular case before issuance of Sanad by the Authority under the 1954 Act. Reference to Rule 19 for the purposes of interpreting the Sanad, which is in individual name of elder son is of no assistance as Rule 19-B of 1955 Rules which reads as under:-

19-B.Compensation ordinarily payable to karta of joint family :-

Compensation in the case of joint family shall ordinarily be payable to the Karta of the family, but where the members of the joint family do not agree that the compensation payable to the family may be paid to the Karta of the family, such compensation shall be paid to each member of the family in accordance with his share specified in the assessment order; or where the share is not so specified in accordance with such share as the Settlement Commissioner may , having regard to the principle of Hindu law determine,

makes it clear that a person allotted land as Karta of HUF is mentioned as such in contradistinction to individual allotment and in this case it is an individual allotment.

21. The other contention raised is that no limitation period applies to a partition suit. It is an accepted and settled proposition and there is no dispute and there cannot be any dispute with that proposition. But in this case even *prima facie*, no right of the plaintiff and his

family members is emerging under the Sanad document, atleast to endeavour to make an enquiry by allowing the suit to proceed. The plaintiff is conscious of not making a claim of declaration in his favour for more than one reason, *firstly* the suit would be hopelessly barred by law of limitation and *secondly* he has to shell down Court fee as the market value of the suit schedule property is high as it is within the vicinity of Hyderabad city and in an extent of Ac.64.10 gts, and half share thereof comes to Ac.32.05 gts.

22. It is settled law that cause of action is a bundle of facts which give the plaintiff a right to claim relief against the defendant. In

MAYAR (HK LIMITED) vs. OWNERS AND PARTIES VESSEL M.V.

FORTUNRE EXPRESS² it was held thus:-

“.....It is apparent that the plaint cannot be rejected on the basis of allegations made by the defendant in his written statement or in any application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does then the plaint cannot be rejected by the Court exercising the powers under Order VII, Rule 11 of the Court.”

² 2006 (3) SCC 100

23. In *KULDEEP SINGH PATHANIA vs. VIKRAM SINGH JERIYAL*³

it was held thus:-

“For an enquiry under Order VII, Rule 11, the Court can see only whether the plaint or rather the pleadings of the plaintiff constitute a cause of action. Pleadings in the sense where even after the stage of written statement if there is a replication filed, in a given situation the same also can be looked into to see whether there is any admission on the part of the plaintiff. In other words under Order VII, Rule 11, the Court has to take a decision looking at the pleadings of the plaintiff only and not on the rebuttal made by the defendant or any other materials produced by the defendant.”

24. The decision in *BALASARIA CONSTRUCTIONS (P) LTD. vs.*

***HANUMAN SEVA TRUST*⁴** is also to the effect that averments made in the plaint are relevant and at that stage the Court would not be entitled to consider the case of the defence and the question of limitation is a mixed question of law and fact. The proposition in the decisions cited by the learned counsel for the plaintiff is a settled proposition but those decisions have no application to the facts of the present case as there is no cause of action on a plain reading of the plaint averments itself and the material connected therewith.

³ (2017 LAW SUIT SC 55)

⁴ (2006 (5) SCC 658)

25. Defendants 14 to 25 who are purchasers of the suit schedule property claim to be in joint possession claiming ownership rights thereon as such, the suit for partition between plaintiff and defendants 1 to 13, without the plaintiff claiming any relief of declaration in respect of defendants 14 to 25 for eviction, cancellation of sale deed documents against them would not lie and there is no cause of action to seek for partition without seeking appropriate relief against defendants 14 to 25. The Hon'ble Supreme Court has reiterated this legal position in **RAJENDRA BAJORIA vs. HEMANT KUMAR JALAN**.⁵

26. The power conferred on the Court to terminate a civil action is a drastic one, and the conditions enumerated under Order VII, Rule 11 of CPC are required to be strictly adhered to. Reading of the averments made in the plaint should not only be formal but also meaningful. If clever drafting has created the illusion of a cause of action, but on a meaningful reading thereof would show that the pleadings are manifestly vexatious and

⁵ 2021 SCC OnLine SC 764

meritless, in the sense of not disclosing a clear right to sue, then the Court should exercise its power under Order VII, Rule 11 of CPC and such a suit has to be nipped in the bud at the first hearing itself. The underlying object of Order VII, Rule 11 of CPC is that when a plaint does not disclose a cause of action, the Court would not permit the plaintiff to unnecessarily protract the proceedings. In such a case, it will be necessary to put an end to the sham litigation so that further judicial time is not wasted.

(see **DAHIBEN vs. ARVINDBHAI KALYANJI BHANUSALI**⁶, **PEARLITE LINERS (P) LTD. vs. MANORAMA SIRSI**,⁷ & **T. ARIVANDANDAM vs. T.V. SATYAPAL**⁸).

27. In a latest decision in **RAJENDRA BAJORIA vs. HEMANT KUMAR JALAN**⁹, the Hon'ble Supreme Court had considered the decisions cited 6, 7, 8 supra and affirmed the above laid proposition at paragraph 20 of the judgment, which reads thus:-

⁶ (2020) 7 SCC 3662),

⁷ (2004) 3 SCC 172)

⁸ (1977) 4 SCC 467

⁹ 2021 SCC OnLine SC 764

“20. It could thus be seen that this Court has held that the power conferred on the Court to terminate a civil action is a drastic one, and the conditions enumerated under Order VII Rule 11 of CPC are required to be strictly adhered to. However, under Order VII Rule 11 of CPC, the duty is cast upon the court to determine whether the plaint discloses a cause of action, by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law. This Court has held that the underlying object of Order VII Rule 11 of CPC is that when a plaint does not disclose a cause of action, the Court would not permit the plaintiff to unnecessarily protract the proceedings. It has been held that in such a case, it will be necessary to put an end to the sham litigation so that further judicial time is not wasted.”

28. From a reading of the plaint averments as it is, at face value, it is clear that no material muchless bundle of facts are pleaded which disclose any right to sue by the plaintiff. The plaintiff has no existing right in the suit schedule property to maintain a suit for partition and only attempts to seek an impermissible re-interpretation of the Sanad dated 17-04-1968 as if it were a source of right for him when it is clear that it is only an individual allotment in favour of the elder son

and the suit is barred under Section 36 of 1954 Act. In the absence of any declaration of right, the plaintiff cannot seek only consequential relief of partition of the non-existing property at the hands of the heirs of the elder son. The plaintiff seems to have only asked for consequential relief as any attempt at seeking declaration of any right in the suit schedule property is barred by the 1954 Act and the 1955 Rules. In the back ground of these facts, the Court cannot permit an arrow in the dark that only seeks consequential relief of partition without any averments that disclose a declaration of any right whatsoever in the suit schedule property.

29. In view of the above analysis and having regard to the plaint averments at its face value, the point is answered in the affirmative, the order impugned is set aside and the revision petition is allowed and as a necessary corollary, the plaint in OS No.139 of 2018 stands rejected. Miscellaneous petitions if any pending stand disposed of. There shall be no order as to costs.

Dated: 17-03-2022
NRG

A.RAJASHEKER REDDY,J

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CRP. No.1941 of 2021

Dated: 17-03-2022

NRG/PS

