

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

**TUESDAY, THE TWENTY THIRD DAY OF JANUARY
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SMT JUSTICE K. SUJANA

CIVIL REVISION PETITION NO: 366 OF 2023

Petition under Article 227 of the Constitution of India against the order dated 29.11.2022 passed in I.A.No.795 of 2022 in O.S.No. 624 of 2022 on the file of the Court of the Principal Junior Civil Judge -cum-Judicial Magistrate of First Class, Jangoan.

Between:

1. Kankanala Laxmi, W/o Ravinder Reddy, Aged about 49 years, occu. Housewife, R/o H.No . 6-83, KadipikondaVillage, Hanumakonda Mandal and District.
2. Karnati Rajasekhar reddy, being rep.by. GPA holder GuralaManjulavani W/o Mahender Reddy, Age.38years, Occ. Housewife, R/o H.No. 2-9-702/1, Shenanagar, HanumakondaCity/ Mandal and Dist. Telengana State vide Doc No.3012/202
3. Katanguri Rupesh Reddy, being rep.by .GPA holder GuralaManjulavani W/o Mahender Reddy, Age . 38years, Occ. Housewife, R/o H.No. 2-9-702/1, Shenanagar, Hanumakonda city/ Mandaland Dist. Telengana State vide Doc No.3013/2022
4. Gurala Hinduja Reddy, being rep.by GPA holder GuralaManjulavani W/o Mahender Reddy, Age.38years, Occ. Housewife, R/o H.No. 2-9-702/1, Shenanagar, Hanumakonda city/ Mandaland Dist. Telengana State vide Doc No.3011/2022

...Petitioners/Def. No.10 to 13

AND

1. Koudagani Purnachander, S/o. Srinivas, Aged about 31 years, Occ. Agriculture, R/o Raghunathpally Village and Revenue Mandal of Jangaon Dist.

...Respondent/Plaintiff

2. Koudagani Srinivas, S/o Veeroji, aged about 56 years, Occu. Agriculture, R/o Raghunathpally Village and Revenue Mandal of Jangaon Dist.
3. Koudagani Sriujan Kumar, S/o Srinivas, aged about 32 years, Occu . Pvt Employee, R/o Raghunathpally Village and Revenue Mandal of Jangaon Dist.
4. Koudagani Ramakanth, S/o Srinivas, aged about 27years, Occu . Agriculture, R/o Raghunathpally Village and Revenue Mandal of Jangaon Dist.
5. KoudaganiKranth Kumar, S/o Srinivas, aged about 24 Years, Occu. Agriculture, R/o Raghunathpally Village and Revenue Mandal of Jangaon Dist.

6. Koudagani Anika, D/o Srinivas, aged about 22 Years, Occu. student, R/o Raghunathpally Village and Revenue Mandal of Jangaon Dist.
 7. Koudagani Vijaya, W/o Srinivas, aged about 46Years, Occu, Housewife, R/o Raghunathpally Village and Revenue Mandal of Jangaon Dist.
 8. ThummalapallyLilatha Bai, W/o Sonaji, aged about 55 years, Occu. Agriculture, R/o Ogulapur village, Athmakur Mandal of Warangal Dist.
 9. Bussari Padma, W/o Mahender, Aged about 48Years, Occu. Agriculture, R/o Ratnagiri Village, Mulkanur Mandal of Hanumakonda Dist.
 10. PadakantiVenkateshwarlu. S/o Rajaiah, aged about 50 Years, Occu. Business, R/o H.No. 15-4-331, Papaiahpet, Swamy Vivekananda Road, Warangal City and Dist.
 11. BairreddyNavya, D/o Bai reddyRajireddy, aged about 23 years, Occu. student, R/o H.No. 1-70. Peddapendyala Village, Dharmasagar Mandal, Hanumakonda Dist.
 12. Thasildhar, Raghunathapally Mandal and Jangaon Dist.
- (Respondent Nos. 2 to 12 are not necessary parties to this petition)

...Respondents/Defendants

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the grounds filed in support of the petition, the High Court may be pleased to grant stay of all proceedings in OS 624/2022 on the file of the Principal Junior Civil Judge at Jangaon till the disposal of the CRP.

Counsel for the Petitioners: SRI NARASIMHULU K.B

Counsel for the Respondents: SRI GOPALA KRISHNA KALANIDHI

The Court made the following: ORDER

THE HONOURABLE SMT. JUSTICE K. SUJANA
CIVIL REVISION PETITION No.366 of 2023

ORDER:

Aggrieved by the order dated 29.11.2022 in I.A.No.795 of 2022 in O.S.No.624 of 2022 passed by the Court of learned Principal Junior Civil Judge-cum-Judicial Magistrate of First Class, Jangaon, the present Civil Revision Petition is filed.

2. I.A.No.795 of 2022 is filed under Order VII Rule 11 of CPC seeking to reject the plaint filed by the respondent/plaintiff stating that the plaint does not disclose cause of action and the relief claimed by the respondent/plaintiff is barred by limitation and the Court fees paid by him is insufficient. Hence, the plaint is liable to be rejected. He further submitted that the plaintiff in his plaint has categorically admitted that he is aware of the Gift Settlement Deed, dated 14.06.2006, through which the transfer of the suit schedule property was made in favour of defendant Nos.2 to 6 and also about the registered sale deed dated 02.07.2000 under which a transfer was made in favour of defendant No.7 and also about the third sale deed executed in favour of defendant No.8. The plaintiff who is well aware of all these transfers, who is also a party in a previous suit vide

O.S.No.38 of 2016, without contesting or preferring an appeal against the disposal of the said suit on 26.07.2017, has filed the present false suit by claiming to be in joint possession of the property which is already transferred to several individuals. He further submitted that the limitation to seek a declaration against the said sale deeds are also lapsed as the plaintiff knew about the documents. As such, prayed the Court to reject the plaint.

3. On the other hand, respondent filed counter denying the averments of the petition stating that the allegations made by the petitioners are not supported by any material as questions raised by the petitioners are only subject matters which are triable in nature and they cannot be looked into while considering an application under Order VII Rule 11 of CPC. He further submitted that the previous suit vide O.S.No.38 of 2016 was not disposed of on merits since the parties of the suit are different. Now the present suit is within the limitation and there is certainly a cause of action for the plaintiffs to file the suit seeking partition against the defendants as they are having the right over the suit schedule



property, therefore, prayed the Court to dismiss the I.A. After hearing on both sides, the trial Court dismissed the petition.

4. Heard Sri K.B.Narasimhulu, learned counsel for the petitioners as well as Sri Gopala Krisha Kalanidhi, learned counsel for the respondents.

5. Learned counsel for the petitioners submitted that he is the defendant No.10 in the main suit and he also advised to depose on behalf of the petitioner Nos.2 to 4. The trial Court without looking into the merits, dismissed the petition, which is contrary to the established principles of law. According to the petitioners, respondent No.2 was the absolute owner and possessor of the suit schedule properties along with some other properties and he deliver the properties in favour of respondent Nos.3 and 7 vide registered gift settlement deed, subsequent to the gift settlement deed. Respondent Nos.3 and 7 impounded their names in the revenue records though they have knowledge about the said gift settlement deed they can be filed and respondent No.10 purchased the property from respondent Nos.3 and 7 and impounded the property in revenue records and the respondent No.10 sold away the suit schedule property to this petitioner Nos.2 to 4 under the valid

registered sale deed. Previously, the suit was filed vide O.S.No.38 of 2016 for the partition of properties. It is the replica of the same. Respondent Nos.1 and 4 took steps for filing of O.S.No.38 of 2016 even after filing of O.S.No.38 of 2016. As such, the plaint itself is liable to be rejected as there is no cause of for filing of suit and it is also barred by limitation.

6. Learned counsel for the petitioner would submit that there is no cause of action for filing the suit and it is barred by limitation and the registration of sale deed itself is in the knowledge of the persons and gift deed also registered in the year 2006. Therefore, it is barred by limitation and there is no property available for partition. Therefore, prayed the Court to allow the petition by rejecting the plaint.

7. On the other hand, learned counsel for the respondent would submit that this is not the stage to look into the merits of the case. While considering the application under Order VII Rule 11, the Court has to see the averments of the plaint only and they have clearly mentioned the cause of action in the plaint and limitation is mixed question of fact and law. It

cannot be decided at this stage, as such, prayed the Court to dismiss the petition.

8. Having regard to the rival submissions made by both the learned counsel and having gone through the material available on record, the point for consideration is whether the O.S.No.624 of 2022 is liable to be rejected. As seen from the record, the plaintiff is the son of defendant No.1 and brother of defendant Nos.2 to 5 and the plaintiff and defendant Nos.2 and 3 are the children of 1st wife of the plaintiff and defendant nos.4 and 5 are the children of defendant No.1 and defendant No.6. Defendant Nos.7 and 8 are the sisters of defendant No.1 they are joint family.

9. According to the plaintiff, the property is ancestors' property which was transferred by the defendants among themselves denying the right of the plaintiff. According to the plaintiff, under the influence of defendant No.6, he executed conveyance in favour of defendants Nos.2 to 6, who again transferred the same to the defendant No.9 who in turn transferred it to defendant Nos.11 to 13. The plaintiff claims that he was not an executor in any of these documents and all these documents were executed without consideration to

his share in the undivided joint family property. While considering the petition under Order VII Rule 11 of CPC, the Court has to look into the averments of the plaint nothing but averments in the plaint and documents filed by the plaintiff. There is no dispute with regard to the relationship between plaintiff and defendants. According to the plaintiff, the cause of action arose on 20.06.2022 when he demanded for the partition of the properties for which the partition of the suit schedule property and to have the division of property.

10. He stated in the prayer that he is requesting the Court to pass preliminary decree for partition declaring the plaintiff to 1/6th share in the plaint schedule property and also for appointment of an Advocate Commissioner. The contention of the learned counsel for the petitioner is that document dated 20.06.2007, he has to seek cancellation of the same within three years whereas, the suit is filed in the year 2022, as such, it is barred by limitation and also no Court fee even paid for the cancellation of the said deeds stating that it is an ancillary relief to the partition. Going through the said condition when the suit is filed for the partition, it cannot be said that the partition suit is barred by limitation and the suit

cannot be rejected in part. When there is an adequate relationship between the plaintiff and defendant and according to the plaintiff, defendant denied his share and it cannot reject the suit on the ground of cause of action. Further, for the relief for the cancellation of sale deed and registered gift deed, limitation and Court fee, the Court can decide the same during the Course of trial as a limitation is mixed question of fact and law. Therefore, there is no illegality in the order of the trial Court and there are no merits in the petition and the same is liable to be dismissed.

11. Accordingly, this Civil Revision Petition is dismissed confirming the order dated 29.11.2022 in I.A.No.795 of 2022 in O.S.No.624 of 2022 passed by the Court of learned Principal Junior Civil Judge-cum-Judicial Magistrate of First Class, Jangaon. There shall be no order as to costs.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

SD/- MOHD. ISMAIL
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Principal Junior Civil Judge-cum-Judicial Magistrate of First Class, Jangaon.
2. One CC to Sri. K.B. Narasimhulu, Advocate [OPUC].
3. One CC to Sri. Gopala Krishna Kalanidhi, Advocate [OPUC].
4. Two CD Copies

JAK

N.A.

HIGH COURT

DATED:23/01/2024

ORDER



CRP.No.366 of 2023

CRP IS DISMISSED

(6) *vw*
2/2/24