

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

Case No. A.S. No.74 of 2015

Between:

Smt. Boorugu Veena W/o.Naveen Kumar

... Petitioner/Appellant (s)

and

Kolkuri Satyanarayana S/o.K. Chandraiah
and others

... Respondent (s)

DATE OF JUDGMENT PRONOUNCED: 06.08.2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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| 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 Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

APPEAL SUIT No.74 of 2015

JUDGMENT:

At the stage of hearing of Miscellaneous Petition, learned counsel for the appellant and the respondents agreed for deciding the main appeal itself, since the decree under challenge is only a rejection of plaint by the VIII Additional District & Sessions Judge, Medak.

The appellant was the plaintiff and the respondents were defendants before the VIII Additional District & Sessions Judge, Medak and they will be hereinafter referred as appellant and respondents.

The appellant/plaintiff filed the suit for recovery of possession of plaint schedule property being the legal heir of her father, who succeeded the schedule property after death of her father. The trial Court rejected the claim by exercising power under Order VII Rule 11 CPC on the sole ground that the suit was barred by *res judicata* in view of the decision in earlier suit in O.S.No.760 of 1980 on the file of the I-Additional District Judge, City Civil Court, Hyderabad, filed by one Suvarna and Kumari Veena.

Learned counsel for the appellant/plaintiff mainly contended that the rejection of plaint by the trial Court on the ground that the claim of the plaintiff is barred by the principle of *res judicata* is not a ground for rejection under Order VII Rule 11 CPC. Learned counsel has drawn the attention of this Court to a decision of the Supreme Court in **Kamala v. K.T. Eshwara Sa**^[1].

Per contra, learned counsel for the respondents/defendants made an honest attempt to support the decree and judgment passed by the trial Court and reiterated that the suit claim is barred by principle of *res judicata* and that the allegations made in the plaint do not disclose the cause of action for filing the suit and that the earlier decree referred in the plaint would put an end to the claim of the plaintiff in the present suit. Therefore, the order passed by the trial Court is in accordance with law.

Order VII Rule 11 CPC deals with rejection of plaint and enumerates several circumstances as to when the plaint can be rejected.

For better appreciation, Order VII Rule 11 is extracted hereunder:

“11. Rejection of plaint:-- The plaint shall be rejected in the following cases:--

- (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;
- [(c) Where the relief claimed is properly valued, but the plaint is written on paper insufficiently stamped, and the plaintiff does not make good the deficiency within the time, if any

- granted by the Court.]
- (d) where the suit appears from statement in the plaint to be barred by any law;
 - (e) where it is not filed induplicate
 - (f) where the plaintiff fails to comply with the provisions of rule 9.”

Learned counsel for the respondents/defendants submitted that when the facts do not disclose the cause of action, the plaint can be rejected.

Admittedly, the trial Court rejected the plaint only on the ground that the claim of the plaintiff is barred by the principle of *res judicata*, without touching the aspect of cause of action. Therefore, it is not proper for me to decide the appeal on the basis of the allegations of plaint, which do not disclose cause of action. The only reason recorded by the trial Court is that the claim of the plaintiff is barred by the principle of *res judicata*. In fact, the plea of *res judicata* is not a pure question of law. It is a mixed question of fact and law and the same cannot be a ground for rejection of a plaint under Order VII Rule 11 at the threshold. The learned counsel for the appellant/plaintiff would draw my attention to the decision in **Kamala’s case (1 supra)**, wherein, **the Apex Court**, in paragraphs 22 and 23 of the said judgment, held as follows:

“22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision.

23. The principles of *res judicata*, when attracted, would bar another suit in view of Section 12 (*sic 11*) of the Code. The question involving a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit may be taken up either as a preliminary issue or at the final hearing, but, the said question cannot be determined at that stage.”

From the principles laid down in the above judgment, it is apparent that the plea of *res judicata* is not a question of law and it is a mixed question of fact and law, which is required to be established only by adducing evidence.

At the stage of registering the plaint as suit, the Court shall not add or subtract anything to the plaint and based on the pleadings alone, the Court can decide whether the plaint can be registered as a suit or not within the boundaries under Order VII Rule 11 CPC. But, the trial Court rejected the plaint, transgressing its limits under Order VII Rule 11 CPC and held that the suit claim of the appellant is barred by principle of *res judicata*. Therefore, at the stage of registration of plaint, rejection of plaint on the ground that the suit is barred by principle of *res judicata* is impermissible and recoding of such finding is unwarranted. Hence, the order passed by the trial Court rejecting the plaint is erroneous in view of the law laid down by the Apex Court in the above decision. As the order passed by the trial Court is erroneous and beyond the scope of order VII Rule 11, the same is hereby set aside.

In view of my foregoing reasons, the trial Court is directed to register the plaint as suit and the parties are at liberty to raise any pleas that are available to them in accordance with law before the trial Court including the plea of *res judicata*.

With the above observations, the Appeal Suit is allowed. There shall be no order as to costs.

M. SATYANARAYANA MURTHY, J

August 06, 2015.

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[\[1\]](#) 2008(12) Supreme Court Cases 661