

HIGH COURT FOR THE STATE OF TELANGANA

CIVIL REVISION PETITION No.1256 of 2019

Between:

J.Ratna Reddy and another

.. Petitioner

AND

Ramuloo (Babu) @ Mohd.Azam and others.

.. Respondents

Date of Judgment Pronounced: 30.01.2023

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE A.SANTHOSH REDDY

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

A.SANTHOSH REDDY, J

*** HONOURABLE SRI JUSTICE A.SANTHOSH REDDY**

+ CIVIL REVISION PETITION No.1256 of 2019

% 30.01.2023

J.Ratna Reddy and another

..PETITIONERS

vs.

\$ Ramuloo (Babu) @ Mohd.Azam and others.

..RESPONDENTS.

! Counsel For The Petitioner: Sri L.Prabhakar Reddy

^ Counsel For Respondent No.1: Sri Mahmood Ali.

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> Head Note :

? CITATIONS : -

1. AIR 1998 Supreme Court 634
2. AIR 2012 sC 3912
3. AIR 1977 SC 2421
4. AIR 2019 Supreme Court 1430
5. AIR 2011 Supreme Court 1140
6. (1991) 4 Supreme Court Cases 1
7. (2020) 7 Supreme Court Cases 366

HON'BLE SRI JUSTICE A.SANTHOSH REDDY**C.R.P.No.1256 of 2019****ORDER:**

This civil revision petition under Article 227 of the Constitution of India is directed against the order dated 26.04.2019 in I.A.No.657 of 2017 in O.S.No.54 of 2014 on the file of XII Additional District Judge, Vikarabad, Ranga Reddy district.

2. Heard the learned counsel for the petitioners and the learned counsel for respondent No.1. Perused the record.

3. Respondent No.1-plaintiff filed suit for partition in O.S.No.54 of 2014 against the petitioners and respondent Nos.2 to 34-defendants. While so, the petitioners-defendant Nos.11 and 12 filed application in I.A.No.657 of 2017 under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure,1908 (for short "C.P.C.") to reject the plaint on the grounds that the suit is barred by limitation, barred under Order II Rule 2 C.P.C., for want of proper Court fee and cause of action and on the ground of *locus standi* of the plaintiff.

4. Respondent No.1-plaintiff filed counter-affidavit resisting the said application.

5. On a consideration of the material on record, the trial Court dismissed the application vide order under revision. Aggrieved by the same, the present civil revision petition is filed.

6. Besides filing the written arguments, learned counsel for the petitioners submits that the trial Court has committed error in dismissing the application filed for rejection of plaint. The suit was filed in O.S.No.12 of 1984 for partition by the father of respondent No.2, wherein respondent No.1 to 3 were brought on record. The present pleadings do not disclose how respondent Nos.1 to 3 related to the property and how the present properties are related to the said suit. Respondent No.1 has not properly valued the suit schedule property and for want of proper Court fee and for all these grounds, the plaint is liable to be rejected. He has placed reliance on the following decisions:

- i) I.T.C. Limited v. Debts Recovery Appellate Tribunal¹
- ii) The Church of Christ Charitable Trust and Educational Charitable Society, rep.by its Chairman v. M/s.Ponniamman Educational Trust rep.by its Chairperson/Managing Trustee.²

¹ AIR 1998 Supreme Court 634

² AIR 2012 SC 3912

- iii) T.Aravindam v. T.V.Satyapal³
- iv) Raghwendra Sharan Singh v. Ram Prasanna Singh (Dead) by Lrs.⁴
- v) Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group⁵
- vi) State of Punjab v. Gurdev Singh⁶
- vii) Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra) Dead through legal representatives⁷.

7. *Per contra*, learned counsel for respondent No.1, while supporting the impugned order, submits that the trial Court has considered the contentions raised by the petitioners in proper perspective and it has rightly dismissed the application filed by them for rejection of plaint.

8. Thus, on hearing the submissions of the counsel for both parties and on perusing the material on record, the point for consideration is; whether the impugned order is sustainable in law?

9. Before advertng to the facts of the present case available from the plaint, it is proper to consider some of the precedents relied on by the learned counsel for the petitioners.

In **I.T.C Limited**'s case (1 supra), the Apex Court considered the question as to whether the power to reject the plaint

³ AIR 1977 SC 2421

⁴ AIR 2019 Supreme Court 1430

⁵ AIR 2011 Supreme Court 1140

⁶ (1991) 4 Supreme Court Cases 1

⁷ (2020) 7 Supreme Court Cases 366

under Order 7 Rule 11 CPC can be exercised even after the framing of issues, and when the matter is posted for evidence, held that even after framing of issues, the application filed under Order VII Rule 11 CPC can be considered.

In **Church of Christ Charitable Trust's** case (3 supra), the Apex Court at para No.6 held as under:

10. Since the appellant herein, as the first defendant before the trial Judge, filed application under Order 7 Rule 11 of the Code for rejection of the plaint on the ground that it does not show any cause of action against him, at the foremost, it is useful to refer the relevant provision:

Order 7 Rule 11 CPC

“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;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of Rule 9:

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp paper shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp paper, as the case may be, within

the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.”

It is clear from the above that where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the court, insufficiently stamped and not rectified within the time fixed by the court, barred by any law, failed to enclose the required copies and the plaintiff fails to comply with the provisions of Rule 9, the court has no other option except to reject the same. A reading of the above provision also makes it clear that power under Order 7 Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial.

11. This position was explained by this Court in *Saleem Bhai v. State of Maharashtra* [(2003) 1 SCC 557] , in which, while considering Order 7 Rule 11 of the Code, it was held as under: (SCC p. 560, para 9)

“9. 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, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court.”

It is clear that in order to consider Order 7 Rule 11, the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinise the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in *Raptakos Brett & Co. Ltd. v. Ganesh Property* [(1998) 7 SCC 184] and *Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express* [(2006) 3 SCC 100] .

10. The main contention raised by the learned counsel for the petitioners is that there is no proper cause of action to file the present suit and the suit claim for partition is based on the cause of action of the year 1984 and the present suit is filed on 08.09.2014

without seeking cancellation of the subsequent registered sale deeds executed in respect of the suit schedule property from the year 1952 onwards and also without making all the subsequent purchasers as party defendants. He further contended that one Mahaboob Ali Khan and Bennuru Bhadrappa purchased the suit schedule properties under registered sale deed in the year 1952 and 1968 respectively. Therefore, the present suit is not only barred by limitation, but also without any cause of action and the same is liable to be rejected.

11. The undisputed facts of the case are that the suit in O.S.No.12 of 1984 was filed for partition by one Abdul Wahab against D.Anthamma @ Jamal Bee and others in respect of matruka properties. In the said suit, the present suit schedule properties were not included, as they were not available for partition and they were already sold by Abdul Gafoor during his life time. The present suit is filed by respondent No.1 for partition, claiming the share of $\frac{4}{16}^{\text{th}}$ share of item Nos.1 and 2 of the suit schedule properties, which were not included in O.S.No.12 of 1984 and which are matruka properties of late Abdul Gafoor S/o.Late Abdul

Khader. Late Abdul Khader had three sons namely:-
i) Abdul Ghani ii) Abdul Gafoor and
iii) Abdul Sattar. Since Abdul Ghani and Abdul Sattar died unmarried, the entire property belonging to late Abdul Khader devolved on the said Abdul Gafoor including the land admeasuring Ac.70-09 guntas in Sy.Nos.141 to 148 and the land admeasuring Ac.1-36 guntas in Sy.No.153, totally admeasuring 72-05 guntas situated at Shivareddypet, Vikarabad, Ranga Reddy District as mentioned in the suit schedule. Late Abdul Gafoor had two wives, namely, i) Rasoolunnisa Begum and ii) Ananthamma @ Jamal Bee (mother of respondent No.1-plaitiff.) The said Anthamma @ Jamal Bee married Abdul Gafoor. The first wife Rasoolunnisa Begum died issueless in the year 1975. The said Abdul Gafoor died on 01.01.1977 leaving behind his widow Anthamma @ Jamal Bee as his legal heir. She died on 28.02.2009.

12. The next question to be considered is; whether respondent No.1 claiming to be the son of Anthamma through her first husband Begari Mogilaiah is entitled to claim the property of late

Abdul Gafoor, who is the second husband of Anthamma @ Jamal Bee (after conversion).

13. Respondent No.1 in the counter-affidavit pleaded that suit in O.S.No.12 of 1984 was decreed and aggrieved by the same, appeal was filed before this Court in A.S.No.7 of 1988 and wherein the above issue has been decided by this Court. In para Nos.64 and 65 of the judgment of the appeal suit, this Court held that defendant No.1 therein i.e. Anthamma @ Jamal Bee as the wife of Abdul Gafoor, admittedly entitled to 1/4th share in the Mathruka properties of Abdul Gafoor on the death of Abdul Gafoor and her right to such 1/4th share did not get postponed by any factual or legal event. It is also held that respondent No.1 is entitled to inherit the share of his mother and the preliminary decree should be passed in his favour in respect of 1/4th share of A- and C schedule properties.

14. In view of the finding of this Court in A.S.No.7 of 1988 that Amthamma @ Jamal Bee-defendant No.1 therein as the wife of Abdul Gafoor, admittedly became entitled to 1/4th share in the Matruka properties of Abdul Gafoor on his the death. Since

respondent No.1 who claims to be the son of said Anthamma through her first husband Begari Mogilaiah, he did not acquire any right of share for partition of the properties. A right which accrued to Anthamma being the wife of Abdul Gafoor due to his death, she was entitled to 1/4th share of Matruka properties of Abdul Gafoor. Infact, respondent No.1 is not having any valid right for claim of the suit schedule properties, as the schedule properties A, B and C were not available for partition and they have already been partitioned among the share holders in A.S.No.7 of 1988 and that mother of respondent No.1 is entitled to 1/4th share in Matruka properties of Abdul Gafoor after his death. Subsequently, because of his relationship with Anthamma being son born through her first husband, respondent No.1 was entitled to inherit the property of his mother. Therefore, I do not find any cause of action accrued to respondent No.1 to seek for partition of the schedule item Nos.1 and 2 properties.

15. Apart from the above, Abdul Wahab, the paternal uncle of Abdul Gafoor, originally, filed O.S.No.12 of 1984 in the year 1984 against D.Anthamma @ Jamal Bee and others in respect of

matruka properties, but he has not included the schedule property item Nos.1 and 2 of the present suit, as the said properties have already been sold by Abdul Gafoor (second husband of Anthamma @Jamal Bee) to third parties during his life time and they are not available for partition by and between the parties thereunder. The suit schedule properties A to C were partitioned among those parties, by the appellate Court in the judgment dated 21.08.2012 in A.S.No.7 of 1998, while setting aside the decree of the trial Court in O.S.No.12 of 1984, dated 05.08.1987.

16. In para No.5 of the plaint, respondent No.1 referred to O.S.No.5 of 1977 filed by Jamal Bee along with respondent No.1 for perpetual Injunction on the file of the District Munsiff, Vikarabad against Abdul Wahab and others in respect of Sy.Nos.150, 151 and 152 of Shivareddypet alone, which are altogether different lands from the same village. Learned counsel for the petitioners brought to the notice of this Court that in the said suit, an additional issue was framed as to whether Abdul Gafoor, husband of plaintiff No.1 died issueless. On the said issue, a finding was given at paragraph No.26 of the judgment that Abdul

Gafoor died issueless, without issues either from Rasoolunnisa Begum (first wife) or through Jamal Bee (second wife) and there is no evidence to prove that respondent No.1 was born through Abdul Gafoor. Therefore, it is clear that respondent No.1 is not concerned with Abdul Gafoor or his matruka property. As such, there is no cause of action accrued in favour of respondent No.1 to seek partition in respect of item Nos.1 and 2 of the suit schedule properties.

17. In **I.T.C. Limited**'s case (1 supra), the Apex Court at para No.16 held that "question is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 CPC. Clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint."

18. In **Raghendra Sharan Singh**'s case (3 supra) at para No.6.3 held that "...the learned Munsif must remember that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC

taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits...”

19. Coming to the pleadings of the plaint, it appears that basically respondent No.1 claiming to be the son of Anthamma @ Jamal Bee through her first husband Begari Mogilaiah (prior to conversion into Muslim community) is not having any right to sue and claim the property of Abdul Gafoor (second husband of Anthamma @ Jamal Bee after conversion). But, as of right, he is claiming a share in the Matruka properties of Abdul Gafoor basing on the judgment of this Court in A.S.No.7 of 1988. The judgments of Apex Court cited supra show that a clever drafting creating illusion of cause of action are not permitted in law and a clear right to sue should be shown in the plaint.

20. No doubt, the cause of action is a bundle of facts and while scrutinizing the plaint averments, it is bounden duty of the trial Court to ascertain the materials for cause of action.

21. Interestingly, the pleadings of the plaint further disclose that the suit schedule property is not identifiable, as there are no specific boundaries of each survey number. At para No.10 of the plaint, it would disclose that late Abdul Wahab styling himself as the absolute owner has sold the suit schedule properties. But, there are no sale particulars and the names of purchasers and the extent of the land available as of now. Without disclosing the said particulars, respondent No.1 has made defendant Nos.6 to 30 defendants as parties to the plaint. Apart from that, he has filed the suit without seeking the cancellation of the registered sale deeds. Undisputedly, Abdul Gafoor, the second husband of Anthamma and his paternal uncle alienated the suit schedule properties vide document bearing doc.No.27/1952, dated 20.04.1952 in favour of Mahaboob Ali Khan, who in turn sold in favour of Bennu Veera Bhadrappa and Shaik Bikan under different registered sale deeds, dated 25.01.1968, which clearly show that the said alienations were made by Abdul Gafoor during his life time. In view of the alienations made by Abdul Gafoor himself during his life time, the suit schedule properties were not available for partition by the

family members of Abdul Gafoor including the mother of respondent No.1 at the time of filing of suit for partition in O.S.No.12 of 1984. Since respondent No.1 is not entitled to a share in the properties of Abdul Gafoor, as he is not a family member of Abdul Gafoor, as of right, he cannot sue or claim the alleged Matruka properties of Abdul Gafoor.

22. The clever drafting of plaint further discloses that respondent No.1 seeks the relief of delivery of actual and vacant physical possession of his share from the respondents i.e. purchasers in respect of the suit schedule property pertaining to the present suit.

23. Another interesting factor is that respondent No.1 seeks relief of the recovery of possession from the purchasers, who purchased the plots, however claims to be in joint possession in respect of the suit schedule properties, as possession follows title in respect of the properties. It also shows that the pleadings are cleverly drafted to avoid the Court fee and to overcome the limitation aspect. If respondent No.1 pleads seeking of the cancellation of the registered sale deeds, the limitation prescribed under Article 58 of the Indian Limitation Act, 1963 (for short "the Act") comes into

picture and as per the Act within three years only, the suit has to be filed. But to avoid the limitation prescribed, without seeking the relief of cancellation of sale deeds, the relief of delivery of vacant possession of his share is claimed stating that the schedule property is in joint possession.

24. At this juncture, it is relevant to rely on the judgment of **Raghawendra Sharan Singh's** case (3 supra), wherein in a suit for partition, an application under Order 7 Rule 11 of C.P.C. for rejection of plaint was filed on the ground of limitation, as the deed of gift having been executed on 06.03.1981 and the suit has been filed in the year 2001 after 22 years of the execution of gift deed. The Apex Court at para No.7.1. held that "At this stage, it is required to be noted that, as such, the plaintiff has never prayed for any declaration to set aside the gift deed. We are of the opinion that such a prayer is not asked cleverly. If such a prayer would have been asked, in that case, the suit can be said to be clearly barred by limitation considering Article 59 of the Limitation Act and, therefore, only a declaration is sought to get out of the provisions of the Limitation Act, more particularly, Article 59 of the

Limitation Act. The aforesaid aspect has also not been considered by the High Court as well as the learned trial Court. In the instant case also, respondent No.1 himself pleads that the suit schedule property was sold by late Abdul Wahab and though sales are void and non-est in the eye of law, he has not pleaded the cancellation of the registered sale deeds. Therefore, I am of the view that respondent has not pleaded the same cleverly and if such prayer is made or averred in the plaint, the suit could have been clearly barred by limitation under Article 59 of the Act.

25. Learned counsel for the petitioners also contended that the suit is barred under Order II Rule 2 of C.P.C.

The philosophy and principle underlying Order II is to discourage and minimize litigation. The law has always frowned upon multiplicity of litigation since less litigation is seen as a sign of a peaceful, progressive and developed society. Hence, Order II has rightly been incorporated in the Code of Civil Procedure in furtherance of the said philosophy of minimizing litigation.

Rule 1 of Order II provides for the abovementioned basic principle, and states that every suit shall, as far as practicable, be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them. Rule 1, therefore, provides the foundational principle. This principle of minimizing litigation is seen in action in Rule 2 and, from a litigation point of view, is the most important provision of this Order.

Rule 2 provides for the following conditions to be complied with while filing a suit:

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action;

(2) Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

This provision consists of two parts, or two situation and these have been explained by the Apex Court in a vast number of decisions. In the case of ***Kalyanaswamy (D) v. L. Bakthavatsalam (D)***, **2020 (3) RCR (C) 404**, the Apex Court explained that Order II Rule 2 has 3 sub-rules. The first sub-rule is the general principle that a plaintiff should include the whole of his claim in the suit. Sub-rule 2 deals with the effect of omission or relinquishment of a claim and sub-rule 3 deals with the omission of a relief. There is a difference between omission of claim and omission of relief. As per the sub-rule, if a claim has been omitted, a person cannot later, in any condition or circumstance, sue for the same. There is an absolute bar to the second suit. On the other hand, in case of relief, if a person omits the same, he or she can sue for the same with the leave or permission of the Court. In the present suit, respondent

No.1 filed the present suit for partition claiming 4/16th share in respect of the plaint schedule properties. O.S.No.12 of 1984 was filed by one Abdul Wahab against mother of respondent No.1 D.Anthamma @ Jamal Bee and others. It is contended by respondent No.1 that neither himself nor his mother were the plaintiffs in respect of the litigation covered in O.S.No.12 of 1984. The bar under Order II Rule 2 C.P.C. applies to subsequent suit, only when the earlier and the present suit filed by the same person or claiming rights through the same person, who filed the previous suit. Hence, the bar under Order II Rule 2 of C.P.C. is not applicable in the present suit.

26. In view of the above, I am of the considered view that on a meaningful reading of the plaint, it is meritless, in the sense of not disclosing a clear right to sue, a clever drafting by creating illusory cause of action on the basis of which, the suit is filed seeking partition of the schedule property and there is no real cause of action has been set out in the plaint and totally based on illusory cause of action, which cannot be permitted in law and the suit is

clearly barred by limitation and the same can be rejected in exercise of powers under Order 7 Rule 11 (a) of C.P.C.

27. For the foregoing reasons, I find that the trial Court has committed jurisdictional error in exercising the powers under Order 7 Rule 11 of C.P.C. and not rejecting the plaint in exercising powers under Order 7 Rule 11 (a) of C.P.C. Therefore, the order of the trial Court cannot be sustained and deserves to be set aside in exercising of the powers under Article 227 of the Constitution of India.

28. In the result, the civil revision petition is allowed. The order in I.A.No.657 of 2017 in O.S.No.54 of 2014, dated 26.04.2019 is hereby set aside. Consequently, I.A.No.657 of 2017 to reject the plaint under Order VII Rule 11 C.P.C. is here by allowed and the plaint being O.S.No.54 of 2014 is hereby rejected. There shall be no order as to costs. Miscellaneous petitions, pending, if any shall stand closed.

A.SANTHOSH REDDY, J

30.01.2023

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