

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

**C.R.P.Nos.911 & 1004 OF 2020**

**COMMON ORDER:**

Since the issue involved in both the revisions is common and they also arise out of O.S.No.626 of 2019, they are heard together and disposed of by this common order.

2. C.R.P.No.911 of 2020 is directed against the order dated 17.03.2020 in I.A.No.2139 of 2019 in O.S.No.626 of 2019, on the file of the Principal District Judge, Ranga Reddy District, at L.B.Nagar, wherein the said application filed by the petitioners herein (defendant Nos.6 to 9) under Order VII Rule 11 of the Code of Civil Procedure (for short 'CPC') seeking rejection of plaint, was dismissed.

3. C.R.P.No.1004 of 2020 is directed against the order dated 17.03.2020 in I.A.No.2157 of 2019 in O.S.No.626 of 2019, on the file of the Principal District Judge, Ranga Reddy District, at L.B.Nagar, wherein the said application filed by the petitioner herein (defendant No.15) under Order VII Rule 11 of the Code of

Civil Procedure (for short 'CPC') seeking rejection of plaint, was dismissed.

4. Heard the learned counsel for the petitioners and learned counsel for the respondents in both the revisions. Perused the record.

5. Respondent Nos.1 to 5/plaintiffs filed the suit O.S.No.626 of 2019 filed a suit for declaration of title and recovery of possession of the suit schedule land against the petitioners herein and other respondents alleging that fraud was played by the then Patwari of Khanapur Village, wherein the names of petitioners and other respondents, more particularly the names of predecessors-in-title of the petitioners and other respondents have been recorded as pattadars and possessors of the respective lands from khasra pahani 1954-55 onwards. While the revenue entries remained so, there was sale of the suit schedule lands and mutation of names of subsequent purchasers. Fraud had been discovered in the year 2001 when the Mandal Revenue Officer submitted report dated 15.05.2001 about wrong entries being made in the revenue records in the suit Sy.No.65. On the basis of report of the MRO,

the officials concerned made corrections in the revenue records. The said corrections were set aside pursuant to the judgment of this Court in W.P.No.20104 of 2005 dated 02.07.2008. The State Government preferred writ appeal against the order of the learned Single Judge vide W.A.No.1103 of 2008 and by judgment dated 20.11.2013, the writ petition was dismissed with an observation that in the event the Government wants to approach Civil Court to establish correct title, it is free to do so. Hence, the present suit was filed by respondent Nos.1 to 5.

6. The revision petitioners filed applications under Order VII Rule 11 of CPC seeking rejection of plaint on the ground that the plaint does not disclose cause of action and is also barred by limitation. The respondents-State resisted the said applications by filing counter affidavits. The trial Court on a consideration of the material on record dismissed both the applications vide separate orders dated 17.03.2020. Challenging the said orders, the present revisions are filed.

7. Mr.A.Venkatesh, learned senior counsel appearing for the petitioner in C.R.P.No.1004 of 2020, submits that the

plaint averments do not disclose proper cause of action, particularly on the plea of fraud, as to who committed the fraud and the manner of commission of fraud is also not stated in the pleadings. Learned senior counsel further submits that the entries in the revenue record from 1941 to 2001 were not challenged by the respondents-State at any point of time for about 60 years. The respondents-State is estopped from claiming that the entries in the revenue record are erroneous and fraudulent and as respondents-State are the custodians of the revenue record, the ground of fraud is not tenable. Learned senior counsel further submits that this Court, while disposing of the writ petition and writ appeal, held that the fraud is an old story and the present suit as filed is not tenable on the same ground. In support of his contentions and submissions, he placed reliance on the decisions of the Hon'ble Apex Court in **MADANURI SRI RAMA CHANDRA MURTHY v. SYED JALAL<sup>1</sup>** and **C.S.RAMASWAMY v. V.K.SENTHIL AND OTHERS<sup>2</sup>**.

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<sup>1</sup>(2017) 13 SCC 174

<sup>2</sup>AIR 2022 SC 4724

8. Mr.Ashish Kale, learned counsel appearing on behalf of Ms.Sneha Bhogle, learned counsel for the petitioners in C.R.P.No.911 of 2020 raised similar contentions as were raised by learned counsel for the petitioners in C.R.P.No.1004 of 2020.

9. Mr.B.S.Prasad, learned Advocate General for the State of Telangana appearing for respondent Nos.1 to 5/State, while supporting the impugned orders, submits that the entire pleadings of the plaint have to be read together to ascertain the existence of *prima facie* cause of action and the same is available in the suit. He further submits that the aspect of limitation is a mixed question of fact and law and when fraud is pleaded, the question of taking the provisions of the Limitation Act have be construed differently and also submits that even if that aspect is taken into consideration, the suit is filed within limitation.

10. Basing on the rival contentions, the point that arises for consideration in this civil revision petition is - whether the impugned order suffers from any irregularity, illegality or impropriety, warranting interference of this Court while exercising jurisdiction under Article 227 of the Constitution of India?

11. I will briefly touch upon the law applicable for deciding this application.

12. Order VII Rule 11 (a) and (d) of C.P.C.

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 exceptional nature for correction 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." (emphasis supplied)

The remedy under Order VII Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be

terminated on any of the grounds contained in this provision.

13. The Hon'ble Apex Court in **DAHIBEN V. ARVINDBHAI KALYANJI BHANUSALI (GAJRA) DEAD THROUGH LEGAL REPRESENTATIVES<sup>3</sup>** has enunciated the principles applicable, while deciding the application under Order VII Rule 11 of CPC which are as under:

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.6 Under Order 7 Rule 11, a duty cast on 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.

23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in *Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success* which reads as: (SCC P.562 Para 139)

139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.

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<sup>3</sup>(2020) 7 SCC 366

24. "Cause of action" means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.

24.1. In **Swamy Atmananda v. Sri Ramakrishna Tapovanam** (2005) 10 SCC 51, this Court held:

24. A cause of action, thus, means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts, which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded". (emphasis supplied)

24.2 In **T. Arivandandam v. T.V. Satyapal & Anr** ((1977) 4 SCC 467), this Court held that while considering an application under Order VII Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words : -

"5. ...The learned Munsiff 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 O. VII, R. 11, C.P.C. 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 ...". (emphasis supplied)



14. It is settled principle of law that while considering the application under Order VII Rule 11 of C.P.C, a duty is cast on the Court to determine whether the plaint discloses any cause of action or whether the suit is barred by any law on the basis of averments contained in the plaint itself. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct, as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order VII Rule 11 of C.P.C can be exercised.

15. In the instant case, a perusal of the record would disclose that the respondents-plaintiffs filed the suit for declaration of title and recovery of possession of the suit schedule land against the revision petitioners and other respondents. The plaint pleadings

further disclose that the suit schedule land is part and parcel of unsurveyed billa daakala land and it is part of Government land. The right, title and possession of the unsurveyed billa daakala land always vests with the Government. It is pleaded that an extent of Acs.156.17 Gts., was entered mischeviously and fraudulently in the name of certain private persons without any valid or relevant orders from the Government or by the competent authority. During verification of khasra pahani and other revenue settlement records in the year 2001, the then Mandal Revenue Officer, Rajendendranagar Mandal, with regard to the illegal entries in the pahanies, found that the then village Patwari of Khanapur fraudulently created Sy.Nos.65/1 to 65/33 and made illegal entries in the pahanies of Khanapaur *inter alia* in Sy.No.65 of Khanapur Village and recorded the same as Sy.No.65/1 to 65/33 to an extent of Acs.543.27 Gts., and also created another survey number as Sy.No.297 to an extent of 350 acres and thereby had increased the total area of Khanapur Village to an extent of Acs.1842.04 Gts., in the pahanies, as against the actual area of Acs.958.17 Gts. The Joint Collector, Ranga Reddy District conducted enquiry while issuing notices to the persons concerned and as per his

orders, the original settlement record in Sy.No.65 consisting of Acs.5-30 Gts., is classified as poramboke. The total unsurveyed area of about 547 acres which did not actually form part of the said village at all and which was left apart from the expanse of the water body known as Osmansagar was over the years recorded mischievously as patta belonging to certain individuals for some portion of the total area (158 acres approximately).

16. Aggrieved by the orders of the Joint Collector, some of the respondents approached this Court and filed writ petitions, the details of which and the orders passed therein are mentioned in paragraph 12 of the plaint pleadings. The correction of the revenue records was set aside by this Court. On writ appeal filed by the Joint Collector, Ranga Reddy District against the order in W.P.No.20104 of 2005, this Court had made it clear that in the event the Government wants to approach Civil Court to establish the correct title, it is free to do so. The cause of action paragraph of the plaint discloses that the cause of action about the illegal entries in the pahanies were noticed by the then Mandal Revenue Officer, Rajendranagar Mandal in the year 2001 and on

15.05.2001, he submitted a report which was enquired by the Joint Collector and he conducted enquiry and passed orders dated 25.08.2005 and the matter was carried to this Court and basing on the orders stated above in the writ appeal, the present suit is filed.

17. The respondents-plaintiffs have categorically mentioned in the plaint pleadings about the accrual of cause of action. Having regard to the provisions of law for analyzing whether the cause of action exists and keeping view the settled legal position stated above, I find that a comprehensive reading of the plaint would indicate that there is proper cause of action for filing the suit and the plaint is not liable to be rejected on this ground.

18. Coming to the aspect whether the suit is barred by limitation, learned senior counsel vehemently submitted that some vexatious averments with respect to fraud are pleaded to bring the suit within the period of limitation. However, on a look at the averments in the plaint, the date of knowledge about the alleged fraud, according to the respondents-plaintiffs, as pleaded in the suit, was noticed in the year 2001 during verification of khasra pahanies with the records by the then Mandal Revenue Officer, Rajendranagar.

Subsequently, the *lis* between the Government and respondents went on till the disposal of writ appeal vide judgment dated 28.11.2013 wherein liberty was given to the State to approach the competent Civil Court to establish the title. Therefore, it is considered that the suit is filed within limitation, as per the plaint pleadings. Apart from this, in the facts and circumstances of the case, this Court is of the considered view that the issue with respect to limitation is a mixed question of law and fact and, therefore, such an issue of limitation is required to be considered at the time of trial.

19. Learned counsel for the petitioners mainly contended that the respondents-plaintiffs by clever drafting tried to bring the suit within the period of limitation which is otherwise barred by limitation. On the decision relied on by learned senior counsel in **C.S.RAMASWAMY**'s case (2 supra), the Hon'ble Apex Court held at paragraph 7.9 of the decision as under:

“Applying the law laid down by this Court in the aforesaid decisions on exercise of powers under Order VII Rule 11 CPC to the facts of the case on hand and the averments in the plaints, we are of the opinion that both the Courts below have materially erred in not

rejecting the plaints in exercise of powers under Order VII Rule 11(d) CPC. The respective suits have been filed after a period of 10 years from the date of execution of the registered sale deeds. It is to be noted that one suit was filed by the minor, which was filed in the year 2006, in which some of the plaintiffs herein were also party to the said suit and in the said suit, there was a specific reference to the Sale Deed dated 19.09.2005 and the said suit came to be dismissed in the year 2014 and immediately thereafter the present suits have been filed. Thus, from the averments in the plaint and the bundle of facts stated in the plaint, we are of the opinion that by clever drafting, the plaintiffs have tried to bring the suits within the period of limitation, which otherwise are barred by limitation. Therefore, considering the decisions of this Court in the case of T. Arivandandam (supra) and other decision of Raghwendra Sharan Singh (supra), and as the respective suits are barred by the law of limitation, the respective plaints are required to be rejected in exercise of powers under Order VII Rule 11 CPC”.

20. The learned Advocate General, while refuting the submissions of learned counsel for the petitioners, contends that the suit is not barred by limitation and immediately after getting knowledge about the fraudulent entries in the revenue records, action was initiated and also submits that the limitation in the present suit is a mixed question of fact and law and the plaint cannot be rejected at the threshold. Learned

Advocate General relied on the judgment of the Hon'ble Apex Court in **CHHOTANBEN AND ANOTHER V. KIRITBHAI JALKRUSHNABHAI THAKKAR**<sup>4</sup> wherein it was held at paragraph 15 as under:

“What is relevant for answering the matter in issue in the context of the application under Order VII Rule 11(d), is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order VII Rule 11(d). Only the averments in the plaint are germane”.

21. The suits for declaration of title against the government, though similar to suits for declaration of title against private individuals, differ significantly in some aspects. The first difference is in regard to the presumption available in favour of the Government. The second difference is in regard to the period for which title and/or possession have to be established by a person suing for declaration of title. The plaint pleadings in the suit clearly disclose that there is collusion between the private individuals and its own officers of the Government who are

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<sup>4</sup>(2018) 6 SCC 422

expected to protect its properties and maintain proper records and on such improper entries in the records, the private parties claim ownership or possession against the property.

22. It is not in dispute that any loss of Government property ultimately is loss to the community. Courts, being the custodian of public properties, owe a duty to be vigilant that public property is not converted into private property at the behest of private individuals.

23. In the case on hand, the main allegations are against manipulation of revenue records and fraudulent/illegal entries with created survey numbers in the khasra pahanies which came to light in the year 2001, the details of which have been pleaded in the suit in detail. The pleadings in the suit, as asserted by learned Advocate General, show that action was initiated immediately after getting knowledge about the fraudulent entries in the revenue records and after disposal of the writ appeal by this Court. Therefore, I am of the view that the issue regarding the suit being barred by limitation, in the facts and circumstances of the present



case, is a triable issue and for which reason, the plaint cannot be rejected at the threshold.

24. On a consideration of the material on record and by relying on the decisions of the Hon'ble Apex Court, the trial Court had, by taking into account the pleadings of the plaint as a whole, rightly held that there is *prima faice* cause of action to file the suit and that the suit is not barred by limitation.

25. For the foregoing reasons, I am of the view that the impugned orders do not suffer any infirmity or material irregularity warranting interference by this Court in exercise of powers under Article 227 of the Constitution of India.

26. In the result, both the civil revision petitions are dismissed. There shall be no order as to costs.

27. Miscellaneous petitions, if any pending, stand closed.

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**A.SANTHOSH REDDY, J**

23.02.2023

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