

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

Civil Revision Petition Nos.2120 of 2021 and 970 of 2022

C.R.P.No.2120 of 2021

Between:

1. Anup K. Kotapalli s/o.K. Rama Rao and another.

...Petitioners

AND

1. Pannala Malla Reddy and 5 others.

...Respondents

C.R.P.No.970 of 2022

Between:

Bala Krishna Shaw.

...Petitioners

AND

- 1.Pannala Malla Reddy and 5 others.

...Respondents

JUDGMENT PRONOUNCED ON: 08.09.2022

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE K.SARATH

1. Whether Reporters of Local : Yes/No
newspapers may be allowed to see
the Judgment ?
2. Whether the copies of judgment : Yes/No
may be marked to Law
Reports/Journals
3. Whether Their Lordship/Ladyship : Yes/No
wish to see the fair copy of
judgment

JUSTICE K.SARATH

THE HON'BLE SRI JUSTICE K.SARATH**+CIVIL RREVISION PETITION NOS.2120 of 2021 AND 970 OF
2022**

%Dated 08.09.2023

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! Counsel for Petitioners : Sri . Vijay Kumar Heroor.

^ Counsel for Respondents :Sri H. Sudhakara Rao.

< GIST :

> HEAD NOTE :

? Cases referred :

¹ 2022 SCC Online SC 1330

² 2023 SCC Online SC 521

³ (2020) 7 SCC 366

⁴ (2012) 8 SCC 706

⁵ (2022) 12 SCC 641

⁶ 2006(5) SCC 658

⁷ 2021(6) Supreme 252

⁸ 2022(1) ALD 129 (TS) (DB)

⁹ 2018(6) SCC 422

¹⁰ 2020(5) ALT 146 (S.B)

¹¹ 2012 0 AIR(CC) 2472

¹² 2018 1 ALT 126

THE HONOURABLE SRI JUSTICE K.SARATH**Civil Revision Petition Nos.2120 of 2021 and 970 of 2022****COMMON ORDER:**

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

2. Since both these revisions arise out of same suit for the common issue, they are being disposed of by this common order.

3. The C.R.P.No.2120 of 2021 is filed against the order dated 07.12.2021 in I.A.No.675 of 2021 in O.S.No.74 of 2021 on the file of the Junior Civil Judge, Tandur, Ranga Reddy District, wherein the petition filed under Order VII Rule 11(a) and (d) C.P.C. read with Section 151 C.P.C., was dismissed.

4. The C.R.P.No.970 of 2022 is filed against the order dated 07.12.2021 in I.A.No.884 of 2021 in O.S.No.74 of 2021 on the file of the Junior Civil Judge, Tandur, Ranga Reddy District, wherein the petition filed under Order VII

Rule 11 C.P.C. read with Section 151 C.P.C., was dismissed.

5. The case of the petitioners/defendant Nos.2 and 3 in C.R.P.No.2120 of 2021 is that they are absolute owners and possessors of suit agricultural land admeasuring Ac:10-00 gts in Sy.No.390/AA and 390/EE situated at Kotepally Village and Mandal, Vikarabad having purchased the same through registered sale deed dated 14.02.2013 and after purchase, their names were mutated in the revenue records. The suit filed by the respondent Nos.1 and 2/plaintiffs for declaration and cancellation of the documents is barred by limitation as the respondent Nos.1 and 2 had executed the registered sale deed dated 23.01.2008 for consideration of Rs.4,00,000/- in favour of respondent No.3/defendant No.1 and the plaint does not disclose any cause of action and hence, they filed the petition to reject the plaint.

6. The case of the petitioner/defendant No.1 in C.R.P.No.970 of 2021 is that the plaint is liable to be

rejected as it does not disclose the cause of action and barred by limitation as the respondent Nos.1 and 2/plaintiffs have sold the property through registered sale deed on 23.01.2008 and after a lapse of 12 years, they cannot file suit for declaration of the same as null and void on the ground of fraud.

7. The Court below has dismissed both the I.As in different orders on the same day i.e. 07.12.2021. Aggrieved by the same, the present revisions are filed.

8. For the sake of convenience, the parties hereinafter are referred to as plaintiffs and defendants as arrayed in the suit.

9. The defendant Nos.1 to 3 have filed both the petitions for rejection of plaint on the ground of non-disclosure of proper cause of action and the suit is barred by limitation. After hearing both sides, the Court below dismissed both the applications on the ground that the limitation is a mixed question of fact and law and a triable issue and the same has to be decided only after adjudication. With

regard to non-disclosing of cause of action, the Court below observed that the plaint averments clearly disclose the cause of action as there were series of events explained in the plaint regarding their demand to return the sale deed and issuance of legal notice after knowing the execution of sale deed by the defendant No.1 in favour of the defendant Nos.2 and 3. The Court below further held that the plaintiffs mentioned that the sale deed executed by them was obtained through fraud as no consideration was paid and this issue has to be decided only after completion of trial.

10. Learned counsel for the petitioners/defendants submits that the Court below has failed to take into consideration the fact that the averments made in the plaint do not disclose any cause of action and it ought to have allowed the applications filed under Order VII Rule 11 of C.P.C., and the Court below has erroneously dismissed those applications. Learned counsel further submits that the suit is barred by limitation as it is only a sham litigation

and the documents relied on by the plaintiffs do not disclose any cause of action.

11. Learned counsel for the petitioners further submits that the Honourable Apex Court has repeatedly held that if the cause of action is created only with an intention to unnecessarily protract the proceedings, the Courts should not permit the plaintiffs to unnecessarily protract the proceedings and it would be necessary to put an end to sham litigation so that further judicial time is not wasted.

12. Learned counsel for the petitioners further submits that the Court below without considering the judgments cited by the petitioners held that the plaint averments disclosed the cause of action as there were series of events explained in the plaint regarding their demand to return the sale deed and issuance of legal notice after knowing the execution of sale deed by defendant No.1 in favour of defendant Nos.2 and 3. The Court below has erroneously taken into account of the contention of the plaintiffs that the sale deed was obtained by fraud as the sale deed was

executed without any consideration, in fact it was clearly mentioned in the Registered Sale deed dated 23.01.2008 that defendant No.1 had paid an amount of Rs.4,00,000/- as consideration to the plaintiffs and the same was acknowledged by them.

13. Learned counsel for the petitioners further submits that the sale deed was executed in the year 2008 and the plaintiffs had failed to explain as to what made them waiting for a long period of more than 12 years to seek for cancelation of the sale deed without mentioning about the dates of their demand for re-registration of the suit schedule property and the Court below has failed to look into the averments of the plaint, which do not disclose as to when it has come to the knowledge of the plaintiffs about the sale deed executed by the defendant No.1 in favour of the defendant Nos.2 and 3.

14. The learned counsel for the petitioners relied on the following judgments;

- 1. C.S.Ramaswamy V. V. K. Senthil and others¹.**
- 2. Ramisetti Venkatanna & another v. Nasyam Jamal Saheb and others²**
- 3. Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra)(D) their LR's and others³**
- 4. The Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman vs. M/s.Ponniamman Educational Trust represented by its Chairperson/Managing Trustee⁴**
- 5. Rajendra Bajoria and others vs. Hemant Kumar Jalan and others⁵**

15. On the other hand, learned counsel for the respondents/plaintiffs submits that the Court below has rightly dismissed the petitions filed by the defendants and the petitions are filed as an attempt to wrongfully stifle the original suit by citing untenable and unfounded grounds so as to escape from the consequences of their illegal actions having created the Registered Sale deed dated 21.01.2013

¹ 2022 SCC Online SC 1330

² 2023 SCC Online SC 521

³ (2020) 7 SCC 366

⁴ (2012) 8 SCC 706

⁵ (2022) 12 SCC 641

bearing document No.673 of 2013 on the strength of the Registered Sale deed dated 23.01.2008 bearing document No.271 of 2008, obtained by the defendant No.1 by way of fraud.

16. Learned counsel for the respondents further submits that the contention of the suit is barred by limitation can only be determined by conducting a thorough trial and the said issue cannot be decided at this stage and if the petitions are allowed, it would cause miscarriage of justice and the Court below has rightly held that the bundle of facts presented in the plaint clearly show that the two sales made in respect to the suit schedule property by fraud.

17. Learned counsel for the respondents further submits that the falsity and prosperity in the plaint allegations may be discerned from the fact that the defendant No.1 is a permanent resident of West Bengal State, who did not even visit Vikarabad District to execute or register the sale deed in favour of the defendant Nos.2 and 3 as evidenced by the documents filed along with the plaint. The suit is filed with

clear cause of action and it can only be determined after conducting thorough trial and the said issues cannot be decided at this stage and requested to dismiss both the Civil Revision Petitions.

18. Learned counsel for the respondents relied on the following judgments;

1. Balasaria Construction (P) Limited vs. Hanuman Seva Trust and others⁶

2. Salim D. Agboatwala and others v. Shamalji Oddhavji Thakkar and others⁷

3. Vinod Lahoti and another v. Viswanath Lahoti and others⁸

4. Chhotanben and another v. Kiritbhai Jalkrushnabhai Thakkar and others⁹

5. Kovalakonda Rama Krishna vs. E. Krishna and others¹⁰

⁶ 2006(5) SCC 658

⁷ 2021(6) Supreme 252

⁸ 2022(1) ALD 129 (TS) (DB)

⁹ 2018(6) SCC 422

¹⁰ 2020(5) ALT 146 (S.B)

6. Ranjithmal Chordiya vs. Shivram Singh and another¹¹

7. M/s. Ashrith Relators & Developers and another v. Capt. Arun Prasad¹²

19. After hearing both sides and perused the record, this Court is of the considered view that the plaintiffs are doing business of optical lenses since the year 1996 in the name and style of 'Arun Optical' and the same was altered as 'Meghana Optical'. The plaintiffs have executed registered sale deed of suit schedule property in favour of the defendant No.1 in the year, 2008 and on a condition that the defendant No.1 will re-register the suit schedule property in the name of the plaintiffs as soon as the due amounts were settled between them. In the entire plaint, the plaintiffs have not mentioned on what date the dues were settled between the plaintiffs and the defendant No.1 and on what date they have demanded for re-registration of the suit schedule property in their

¹¹ 2012 0 AIR(CC) 2472

¹² 2018 1 ALT 126

favour. As per the plaint averments, the plaintiffs for the first time after, 2008 have demanded the defendant No.1 through the legal notice dated 13.01.2021 and requested to cancel the registered sale deed bearing document No.673 of 2013 dated 21.01.2013 executed in favour of the defendant Nos.2 and 3 and also asked to re-register the suit schedule property which was obtained fraudulently. The defendant No.1 has denied the same in his reply notice.

20. The defendant Nos.1 to 3 have filed two applications for rejection of the plaint under Order VII Rule 11 C.P.C. on the ground of no cause of action and the suit is barred by limitation.

21. The relevant portion of the cause of action in the plaint in O.S.No.74 of 2021 in paragraph No.IV is as follows;

The cause of action initially arose on 23-01-2008 when the plaintiffs registered the suit schedule properties in favour of defendant No.1 without any consideration and only as a security for the outstanding payments to be made by the plaintiff No.1. The cause of action also arose in the year 2009 and onwards when the plaintiffs settled all accounts and cleared their dues with the defendant No.1 and asked him to re-register the suit schedule properties back in the name of

the plaintiffs, as agreed. The cause of action also arose when the plaintiffs reliably learnt that the defendant No.1 sold the suit schedule properties to defendant Nos.2 and 3 by doing fraud with the plaintiffs and upon confrontation by the plaintiffs apologized and further promised to re-register the suit schedule properties back in plaintiffs' name. The cause of action also arose on 13-01-2021 when the plaintiffs got issued legal notice to the defendants and the cause of action is still subsisting as there has been no reply from any of the defendants with regard to the notice sent and despite the notice the defendant No.1 has not acted upon his promise and neither did he re-register the suit schedule properties back in the name of the plaintiffs nor cancelled the subsequent sale deed made in favour of defendant Nos.2 and 3'.

22. A plain reading of the cause of action clearly shows that except registration of document dated 23.01.2008 and the legal notice dated 13.01.2021, no dates are mentioned in the cause of action. The said cause of action is very vague and not disclosed any particulars as to which date the accounts between the plaintiffs and the defendant No.1 were settled and when the plaintiffs have demanded the defendant No.1 for re-registration of the documents and rejection to that effect by the defendant No.1. The Court below without taking into account of the cause of action part, basing on the averments made in the plaint, rejected the applications filed by the petitioners.

23. The judgments relied on by the counsel for the petitioner apply to the instant case. The impugned order

passed by the Court below is contrary to the judgment of the Hon'ble Supreme Court.

Recently, the Hon'ble Supreme Court in **C.S.Ramaswamy's case** (cited 1 supra), held as follows;

"7.7 Even the averments and allegations with respect to knowledge of the plaintiffs averred in paragraph 19 can be said to be too vague. Nothing has been mentioned on which date and how the plaintiffs had the knowledge that the document was obtained by fraud and/or misrepresentation. It is averred that the alleged fraudulent sale came to the knowledge of the plaintiffs only when the plaintiffs visited the suit property. Nothing has been mentioned when the plaintiffs visited the suit property. It is not understandable how on visiting the suit property, the plaintiffs could have known the contents of the sale deed and/or the knowledge about the alleged fraudulent sale.

7.8 Even the averments and allegations in the plaint with respect to fraud are not supported by any further averments and allegations how the fraud has been committed/played. Mere stating in the plaint that a fraud has been played is not enough and the allegations of fraud must be specifically averred in the plaint, otherwise merely by using the word "fraud", the plaintiffs would try to get the suits within the limitation, which otherwise may be barred by limitation. Therefore, even if the submission on behalf of the respondents – original plaintiffs that only the averments and allegations in the plaints are required to be considered at the time of deciding the application under Order VII Rule 11 CPC is accepted, in that case also by such vague allegations with respect to the date of knowledge, the plaintiffs cannot be permitted to challenge the documents after a period of 10 years. By such a clever drafting and using the word "fraud", the plaintiffs have tried to bring the suits within the period of limitation invoking [Section 17](#) of the limitation Act. The plaintiffs cannot be permitted to bring the suits within the period of limitation by clever drafting, which otherwise is barred by limitation".

In the instant case also, the averments in the plaint and the bundle of facts stated in the plaint are clever drafting and the plaintiffs have tried to get the suit within limitation which otherwise may be barred by limitation, as held by the

Hon'ble Supreme Court in the aforesaid judgment and this is a fit case for the Court below to exercise under Order VII Rule 11 C.P.C.

24. The plaintiffs have tried to circumvent the provision of Limitation Act and have tried to maintain the suit which is nothing but abuse of process of Court and the law, as held by the Hon'ble Supreme Court in **Ramisetti Venkatanna's** case (cited 2 supra). In the absence of any cause of action shown by the plaintiffs, the plaint has to be rejected under Order VII Rule 11 C.P.C., as held by the Hon'ble Supreme Court in **Church of Christ Charitable Trust's** case (cited 4 supra).

25. The judgments relied on by the learned counsel appearing for the respondents in **Balasaria Construction Private Limited's** case (cited 6 supra), **Salim D. Agboatwala's** case (cited 7 supra), **Vinod Lahoti's** case (cited 8 supra), **Chhotanben's** case (cited 9 supra), **Kovalakonda Rama Krishna's** case (cited 10 supra), **Ranjithmal Chordiya's** case (cited 11 supra) and **M/s.Ashrith Relators and Developers's** case (cited 12

supra) are not apply to the instant case as in the instant case, no cause of action is disclosed in the plaint averments and as the relief in the plaint is declaration of sale deed dated 23.01.2008 as fraud and also cancellation of subsequent sale deed dated 21.01.2013. In the plaint averments, no where it is mentioned about the particulars of the dues between the plaintiffs and the defendant No.1 and when those amounts were settled from the year, 2008 to 2021. In the absence of date of transactions and nearly after 13 years in issuing legal notice not amounts to within the limitation and merely the averments made as fraud is a clever drafting of plaint and the same cannot be taken into account. The Court below has failed to take into account of all these aspects before dismissing the applications filed by the petitioners for rejection of plaint and the same is liable to be set aside.

26. In view of the above findings, both the Civil Revision Petitions are allowed by setting aside the orders dated 07.12.2021 passed in I.A.No.675 of 2021 in O.S.No.74 of 2021 and I.A.No.884 of 2021 in O.S.No.74 of

2021 on the file of the Junior Civil Judge, Tandur, Ranga Reddy District. Consequently, I.A.Nos.675 of 2021 in O.S.No.74 of 2021 and I.A.No.884 of 2021 in O.S.No.74 of 2021 are allowed and the plaint in O.S.No.74 of 2021 is ordered to be rejected. No order as to costs.

28. Miscellaneous petitions, if any pending in these revisions, shall stand closed.

SRI K. SARATH, J

Dated: 08 .09.2023.

Sj

L.R.copy to be marked.