

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD***********Civil Revision Petition No.2879 of 2022****C.R.P.No.2879 of 2022**

Between:

Perna Swarupa.

...Petitioner**AND**

1. Perna Krishna and 4 others.

...Respondents**JUDGMENT PRONOUNCED ON: 03.10.2023****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 No.2879 of 2022

%Dated 03.10.2023

C.R.P.No.2879 of 2022

Perna Swarupa.

...Petitioner

AND

1. Perna Krishna and 4 others.

...Respondents

! Counsel for Petitioner: Sri Pratap Narayan Sanghi, learned Senior
Counsel for Sri Avadesh Narayan Sanghi.

^ Counsel for Respondents :Sri Mamidi Avinash Reddy.

< GIST :

> HEAD NOTE :

? Cases referred :

- ¹ (2013)3 SCC 182
- ² AIR 2022 SC 2707
- ³ Air 2022 SC 4724
- ⁴ AIR 2019 SC 1430
- ⁵ (2011) 9 SCC 126
- ⁶ (2019) 7 SCC 76
- ⁷ (2015) 8 SCC 331
- ⁸ (2004) 1 ALT 34

THE HON'BLE SRI JUSTICE K.SARATH**CIVIL REVISION PETITION No.2879 of 2022****ORDER:**

This Civil Revision Petition is filed under Article 227 of the Constitution of India aggrieved by the order dated 13.10.2022 in I.A.No.797 of 2021 in O.S.No.464 of 2021 on the file of Principal Senior Civil Judge, Ibrahimpatnam, Ranga Reddy District.

2. Heard Sri Pratap Narayan Sanghi, learned Senior Counsel for Sri Avadesh Narayan Sanghi, learned Counsel for the petitioner and Sri M. Avinash Reddy, learned Counsel for the respondent No.1.

3. The learned Senior Counsel for the petitioner/defendant No.2 submits that petitioner filed I.A.No.797 of 2021 in O.S.No.464 of 2021 on the file of Principal Senior Civil Judge, Ranga Reddy District at Ibrahimpatnam for rejection of the plaint and the same

was dismissed by the Court below through the impugned order.

4. The learned Senior Counsel for the revision petitioner/defendant No.2 further submits that the suit schedule properties were gifted to her by her father/defendant No.1 through gift deeds dated 15.10.2014. The suit is filed in the year 2021 for cancellation of the said registered gift deeds and the suit is barred by limitation and there is no cause of action to file the suit, but the Court below without considering all these facts dismissed the petition for rejection of plaint.

5. The learned Senior Counsel for the revision petitioner further submits that the Court below has failed to appreciate the difference between the mistake of law and mistake of fact and the observation that the limitation is always a mixed question of law and the fact is quite erroneous. The Court below failed to consider

that the monies as alleged by the plaintiff were transferred to the respondent No.3 for registration of properties and the respondent No.3 being a company is an independent legal entity and the privity of the contract is between the legal entity and the plaintiff and there is no privity of contract between the plaintiff/respondent No.1 and the revision petitioner. The Court below also ignored the admission of the plaintiff that the cause of action of the suit first arose when the defendant No.1 played fraud on the plaintiff and obtained illegal sale deeds in the year, 2007 and when the plaintiff came to know about the alleged fraud in the year, 2011 after he returned from USA and therefore the suit is barred by limitation and requested to allow the Civil Revision Petition.

6. The learned Senior Counsel for the petitioner in support of his contention placed reliance on the following Judgments:

- 1. Board of Trustees of Port of Kandla vs. Hargovind Jasraj and another¹**
- 2. Rajpal Singh vs. Saroj (Deceased) through LRs²**
- 3. C.S.Ramaswamy v. V.K.Senthil³**
- 4. Raghwendra Sharan Singh v. Ram Pra-sanna Singh (dead) by Lrs.⁴**
- 5. Khatri Hotels Private Limited and another vs. Union of India and another⁵**

7. On the other hand the learned Counsel for the respondent No.1/plaintiff vehemently opposed the Civil Revision Petition contending that considering the advice of the defendant No.1, the plaintiff paid total consideration of Rs.70,00,000/- to the defendant No.3 through cheque bearing No.364266 drawn on Canara Bank, S.R. Road Branch, Secunderabad. Thereafter, the defendant No.1 once again played mischief and transferred plots in favour of the defendant No.2. The defendant No.1 admitted his mischief and requested the

¹ (2013)3 SCC 182

² AIR 2022 SC 2707

³ Air 2022 SC 4724

⁴ AIR 2019 SC 1430

⁵ (2011) 9 SCC 126

plaintiff not to initiate legal action and he has given an undertaking to the plaintiff that he will pay the entire sale consideration after cancelling the sale deeds and gift settlement deeds on 02.12.2015. However, the defendant No.1 did not take any efforts to cancel the sale deeds and gift settlement deeds and the defendant No.1 issued confirmation letter assuring the plaintiff on 06.09.2019. Thereafter, no action has been taken in furtherance of the said assurance. Thus, the respondent No.1/plaintiff constrained to file O.S.No.464 of 2021 on the file of Principal Senior Civil Judge, Ibrahimapatnam, Ranga Reddy District.

8. The learned Counsel for the respondent No.1 further submits that the suit is filed not only for declaration but also for recovery of possession of the suit lands. The limitation for filing the suit for recovery of possession on the basis of title is 12 years and therefore the suit is filed within limitation. Merely

because one of the reliefs sought is of declaration that does not mean that limitation of 12 years is lost and the Court below considering all these aspects rightly dismissed the application filed by the petitioner and the present revision is devoid of merits and requested to dismiss the same.

9. The learned Counsel for the respondent No.1 in support of his contention relied on the following Judgment:

1. Soparnrao and another Vs. Syed Mehmood and Others⁶

2. P.V.Guru Raj Reddy and another vs. P. Neeradha Reddy and others⁷

10. After hearing both sides and perused the record, this Court is of the considered view that the plaintiff is son and the defendant No.2 is daughter of defendant No.1. The plaintiff filed suit for declaration of title, recovery of possession and consequential reliefs under Section 26 and under Order VII Rules 1 and 3 C.P.C.

⁶ (2019) 7 SCC 76

⁷ (2015) 8 SCC 331

stating that he is a Software Engineer by profession and he left to USA for work. In his absence, the plaintiff appointed his father i.e, defendant No.1, to act as his authorized representative through General Power of Attorney dated 12.02.2004 to purchase immovable properties in the name of the plaintiff and to file income tax returns from time to time. The defendant No.1 has purchased eight (8) plots through registered sale deeds from the authorized representative of the defendant No.3 company in the year 2007 in his name by paying the amounts sent by the plaintiff. The plaintiff was under the bona fide belief that the sale deeds were executed for the suit schedule plots in his name. However, when he returned back to India in the year, 2011 he came to know about the mischief played by the defendant No.1 and when he demanded the defendant No.1 to change sale deeds in his name. On one pretext or the other, the defendant No.1 has not changed the

name of the plaintiff and executed the gift deeds in favour of defendant No.2 on 15.10.2014. After came to know the same, the plaintiff demanded the defendant No.1 and he informed that he will take legal action against the defendant Nos.1 and 2 if the suit schedule properties were not transferred in his name. By that time, the defendant No.1 has requested not to initiate any legal action and executed an undertaking dated 02.12.2015 to get the sale deeds and gift settlement deeds cancelled after paying the entire sale consideration while admitting the mischief played by him. Since the defendant No.1 did not cancel the sale deeds, once again the plaintiff demanded either to transfer or return his money with interest at that point of time. Thereafter, the defendant No.1 issued a Confirmation Letter dated 06.09.2019 stating that he was unable to meet the given commitment in the undertaking dated 02.12.2015 due to personal issues

between him and the defendant No.2 and assured that he will cancel the illegal sale deeds and gift deeds. In spite of the same, the defendant No.1 was not cancelled the sale deeds and gift deeds. Therefore, the plaintiff constrained to the file the suit.

11. The petitioner/defendant No.2 filed I.A.No.797 of 2021 under Order VII Rule 11 CPC to reject the plaint on the ground that the suit is filed on an illusory cause of action by clever drafting and a reading of the plaint clearly reveals that the suit is manifestly vexatious, meritless and is barred by limitation. After hearing both sides and considering the facts of the case, the Court below dismissed the said I.A., filed by the petitioner/defendant No.2 and held that the grounds taken by the petitioner cannot be decided at the stage of petition filed for rejection of plaint and the said order is impugned in the present revision.

12. The main contention of the learned Senior Counsel appearing for the petitioner/defendant No.2 is that the suit filed by the respondent No.1/plaintiff is barred by limitation on the ground that the plaintiff has knowledge about the execution of sale deeds by the defendant No.3 company in favour of the defendant No.1 in the year, 2011. He submits that as per Articles 58 and 59 of the Limitation Act, 1963 (for short 'the Act'), within three years the plaintiff has to file the suit, but after 10 years in the year 2021, he filed the present suit and the same is barred by limitation and the Court below has wrongly taken into account the Article 65 of the Act and held that the suit is filed within the limitation. His further contention is that there is no specific cause of action mentioned by the plaintiff in the plaint and it amounts to clever drafting as held by the Hon'ble Supreme Court.

13. It is settled law that for considering the petition under Order VII Rule 11 CPC, the Court has to take into account the averments in the plaint along with the documents filed by the plaintiff. In the instant case, the cause of action in the plaint as follows:

“That the cause of action for this suit first arose when the defendant Nos.1 and 2 played fraud on the plaintiff and obtained illegal sale deeds in the year 2007 for the suit schedule plots from defendant Nos.3,4 and 5. The cause of action also arose when the defendant No.1 executed Gift Deeds for the suit schedule plots in favour of the plaintiff in the year 2014. The cause of action also arose when the plaintiff came to know of the fraud played by defendant No.1 and defendant No.2 in the year 2011 when he came to India and the cause of action continued every day thereafter when the plaintiff kept asking defendant No.1 to cancel the illegal obtained sale deeds. And the cause of action has also arisen on 02.12.2015 when the defendant No.1 gave an undertaking to the plaintiff admitting that he has illegally obtained sale deeds for the suit schedule plots in his name and in the name of defendant No.2 by playing fraud on the plaintiff and agreed to convey the suit schedule plots to the plaintiff and the cause of action has also arisen on 06.09.2019 when the defendant No.1 gave confirmation letter agreed to transfer the schedule of plots to the plaintiff. As such the cause of action has been continuing since then every day thereafter”.

A close reading of the cause of action reveals that the cause of action arose when the plaintiff came to know about the fraud played by the defendant Nos.1 and 2 in the year, 2011 when he came to India and the cause of action continued every day thereafter when the plaintiff asking the defendant No.1 to cancel the sale deeds illegally obtained by him.

14. The Part III of the Schedule of the Limitation Act, 1963 deals with the suits relating to declaration in Articles 56 to 58. The Part V of the Schedule of the Limitation Act, 1963 deals with the suits relating to immovable property in Articles 61 to 65. Under Article 65 of the Act, for possession of immovable property or any interest therein based on title, the limitation for the suit is 12 years and the trial Court has taken into account the Article 65 of the Act and held that the suit is filed within the limitation.

15. The judgment relied on by the learned counsel for the respondent in **Sopanrao's** case (cited 6 supra), the Hon'ble Supreme Court in paragraph No.9 held as follows:

“ . It was next contended by the learned counsel that the suit was not filed within limitation. This objection is totally untenable. Admittedly, the possession of the land was handed over to the Trust only in the year 1978. The suit was filed in the year 1987. The appellants contend that the limitation for the suit is three years as the suit is one for declaration. We are of the view that this contention has to be rejected. We have culled out the main prayers made in the suit hereinabove which clearly indicate that it is a suit not only for declaration but the plaintiffs also prayed for possession of the suit land. The limitation for filing a suit for possession on the basis of title is 12 years and, therefore, the suit is within limitation. Merely because one of the reliefs sought is of declaration that will not mean that the outer limitation of 12 years is lost. Reliance placed by the learned counsel for the appellants on the judgment of this Court in [L.C. Hanumanthappa v. H.B. Shivakumar](#)¹ is wholly misplaced. That judgment has no applicability since that case was admittedly only a suit for declaration and not a suit for both declaration and possession. In a suit filed for possession based on title the plaintiff is bound to prove his title and pray for a declaration that he is the owner of the suit land because his suit on the basis of title cannot succeed unless he is held to have some title over the land. However, the main relief is of possession and, therefore, the suit will be governed by [Article 65](#) of the [Limitation Act](#), 1963. This Article deals with a suit for possession of immovable property or any interest therein based on title and the limitation is 12 years from the date when possession of the land becomes adverse to the plaintiff. In the instant case, even if

the case of the defendants is taken at the highest, the possession of the defendants became adverse to the plaintiffs only on 19.08.1978 when possession was handed over to the defendants. Therefore, there is no merit in this contention of the appellants.

In the above judgment, it is clearly mentioned that if the prayer in the suit is not only for declaration but also for possession, the limitation is 12 years. Merely because one of the reliefs sought is of declaration that will not mean that the outer limitation of 12 years is lost.

16. This Court in **Naseem Begum and another vs. S.M.Khaleem**⁸ held that when a suit is based on title and the relief of declaration and recovery of possession apart from other reliefs had been prayed for, the period of limitation is 12 years and not 3 years since the Article 65 of the Limitation Act is applicable and not the Article 58 of the Limitation Act.

⁸ (2004) 1 ALT 34

17. The Hon'ble Supreme Court in **P.V.Guru Raj Reddy's** case (cited 7 supra) held at para 5 as follows:

"5. Rejection of the plaint under Order VII rule 11 of the CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order VII rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that has to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order VII rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.

The above judgments are squarely apply to the instant case as the suit is filed declaration of title, recovery of possession and consequential relief. In view of the same, the suit is filed within limitation.

18. The judgments relied on by the learned Senior Counsel for the petitioner viz **Board of Trustees's** case, **Rajpal Singh's** case, **C.S.Ramaswamy's** case, **Raghwendra Sharan Singh's** case and **Khatari Hotels's** case (cited 1 to 5 supra) are not apply to the instant

case as the cause of action clearly mentioned in the plaint and it cannot be treated as clever drafting for rejection of plaint under Order VII Rule 11 of C.P.C.

19. In the instant case, along with the plaint, the plaintiff has filed the undertaking dated 02.12.2015 and also the confirmation letter dated 06.09.2019 issued by the defendant No.1. The defendant No.1 who has executed the gift deeds in favour of the defendant No.2 has not filed any petition or counter denying the disputes with the plaintiff and admittedly, there is a power of attorney executed by the plaintiff in favour of the defendant No.1. The undertaking letter and the confirmation letter issued by the defendant No.1 have to be examined in detail during the course of the trial and the plaint cannot be rejected under Order VII Rule 11 CPC, merely on the petition filed by the defendant No.2.

20. The plaintiff is seeking declaration of the ownership over the suit schedule property and recovery of possession, which is a triable issue and the same has to be proved after full-fledged trial. The both parties have submitted the Bank statements before this Court through memos and the said memos cannot be looked into in the present revision petition and after conducting full-fledged trial only, all the facts will come out as the contesting parties in the suit are close relatives.

21. In view of the above findings, there is no illegality or irregularity in the impugned order passed by the Court below and this Court is not inclined to interfere with the same while exercising jurisdiction under Article 227 of the Constitution of India.

22. Accordingly, the Civil Revision Petition is devoid of merits and is accordingly dismissed.

23. Miscellaneous petitions, if any pending in this revision, shall stand dismissed. There shall be no order as to costs.

JUSTICE K. SARATH

Date.03.10.2023

sj/trr

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