

*** THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI**

+ A.S.No.292 OF 2023

% 29.04.2024

Between:

Mohammaed Nadeem Ullah Khan

Appellant

Vs.

Mohammed Akber Ali and 2 others

Respondents

! Counsel for Appellant : Ms.K.Annapurna Reddy

^ Counsel for Respondents : Sri R.S.Sravan Kumar

<GIST:

> HEAD NOTE:

? Cases referred :

1. 2017 (5) SCC 345
2. 2022 Live Law (SC) 280
3. (2019) 20 Supreme court Cases 226
4. 2023 LiveLaw (SC) 940
5. 2022 LiveLaw (SC) 963
6. MANU/SC/0508/2020
7. MANU/SCOR/08861/2021
8. MANU/TN/0105/1939
9. MANU/AP/0951/2007
10. MANU/TN/0455/1959
11. MANU/UP/0100/1972
12. MANU/AP/0747/2006

THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI**APPEAL SUIT No.292 OF 2023****JUDGMENT:**

Aggrieved by the order and decree dated 08.06.2022 in I.A.No.505 of 2022 in O.S.No.34 of 2022 (hereinafter will be referred as 'impugned order') passed by the learned Senior Civil Judge - cum - Assistant Sessions Judge, Sangareddy (hereinafter will be referred as 'trial Court'), the plaintiff preferred the present appeal to set aside the impugned order.

2. For the sake of convenience, the parties hereinafter are referred to as they are arrayed before the trial Court.

3. The brief facts of the case, which necessitated the plaintiff/appellant to file the present appeal, are that the plaintiff filed O.S.No.34 of 2022 against defendants seeking cancellation of two sale deeds dated 16.04.2021 executed by defendant No.1 in favour of defendant Nos.2 and 3 respectively and declaring them as null, void and not binding on the plaintiff and for a consequential perpetual injunction in respect of suit schedule properties. After receipt of summons, the defendant filed petition vide I.A.No.505 of 2022 under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure to reject

the plaint. The brief averments of the affidavit filed in support of the petition are as under:

i) The suit is not maintainable either in law or on facts as the plaintiff has no cause of action and the plaintiff has initiated vexatious litigation only to harass the defendant. The plaintiff has cleverly drafted the pleadings, which created illusions of the cause of action, which is not permitted in law.

ii) A suit for cancellation of an instrument will be maintainable only when filed by the party, who has executed such a document. But the documents, which plaintiff is seeking to be cancelled were not executed by the plaintiffs. Hence, from the pleadings in the plaint, it is clear that the plaint is barred by law.

iii) The suit is nothing but a vexatious suit initiated only to create hardships for the petitioner/defendant, who has obtained the work commencement letter from GHMC authorities. The real intention of the plaintiff is to stop the construction of the house in suit schedule house.

b) In reply to the petition averments, the respondent/plaintiff filed counter, the brief averments of which

are as under:

i) In recitals of the documents, the defendant mentioned that he is the absolute owner of the schedule property but he did not mention as to how he acquired the title. This itself shows that the defendant played fraud during the Covid-19 pandemic, as the property was under lock and key, he executed the fictitious sale deeds that are liable to be cancelled by the Court. The defendant has approached the Court with unclean hands as he does not have any right to claim that the suit schedule property belongs to him.

ii) Though it is contended by the defendant that there is no cause of action, it is very much evident that from the date of execution of fraudulent sale deeds i.e., 16.04.2021 the cause of action arose for filing the suit. The plaintiff is the absolute owner and filed suit for cancellation which is maintainable. In fact, the defendant is not having any right to claim that he is the absolute owner of the suit schedule property, hence, he is a third party to the suit proceedings.

iii) It is stated that the permission by the GHMC authorities for construction will not give any right or title to the property. The officials of GHMC are in collusion with defendant. A proper

enquiry in the suit proceedings is required to be conducted to decide the rightful owners of the suit schedule property. At this juncture the suit cannot be rejected, hence, the petition filed by the defendant is liable to be dismissed.

c) The trial Court after considering the rival contentions, allowed the petition and thereby suit of the plaintiff was rejected. Aggrieved by the said order and decree, the plaintiff filed the present appeal to set aside the impugned order.

4. Heard both sides and perused the record including the grounds of appeal.

5. The two grounds on which the defendant filed the petition under order VII Rule 11 of the Code of Civil Procedure is that the plaint is barred by law and that there is no cause of action for the plaintiff to file the suit. Now, it is to be ascertained as to whether the suit filed by the plaintiff is hit by the above two grounds.

6. The contention of the plaintiff is that the paternal grandmother of the plaintiff by name Smt. Sogra Begum was the owner and possessor of the suit schedule property and she constructed house in the year 1946 after obtaining permission

from the then Jagirdar and paying house tax to the Gram Panchayat of Ramachandrapuram Village. In the year 1972 on her application, the Special Officer of the Gram Panchayat granted permission to her for construction of compound wall for the house. Aggrieved thereby one Syed Hussain, S/o. Syed Ali, who was her neighbour filed Appeal No.1991/1971 before the District Panchayat Officer at Sangareddy. The appellant questioned in the appeal the right of Sogra Begum over the vacant site appurtenant to her house and for enclosing it by constructing compound wall and claimed that the suit which was in her possession and enjoyment belonged to him but he could not produce any document in support thereof. The District Gram Panchayath Officer having found that the site belonged to the Government and so the rival claims in respect of the site could be decided only by a competent Court of law passed order dated 02.07.1972 holding that the site could be put to use as was done till then. Since then Sogra Begum was in possession and enjoyment of the site and by virtue of the order of the District Panchayat Officer, she was permitted to continue to use the site. Thus, Sogra Begum was in possession and enjoyment of the house premises including the vacant site adjoining the house till her death. The plaint schedule house

property after the death of Sogra Begum devolved upon her husband Hameed Ullah Khan and after his death, the plaintiff and his two brothers being sons of Hameed Ullah Khan succeeded to the property. The plaintiff has been paying the property tax to the plaint schedule property till date. The plaintiff in support of his contention relied upon copy of order dated 02.07.1972 in Appeal No.1991/1971 passed by the District Panchayat Officer at Sangareddy.

7. It is further contention of the plaintiff that the defendant Nos.1 to 3 are strangers and they are no way connected with the ownership and possession of the plaint schedule house but defendant No.1 colluded with defendant Nos.2 and 3 and brought into existence sale deeds bearing document Nos.17008 and 17009 of 2021 dated 16.04.2021 in respect of suit schedule property with an intention to usurp the property of the plaintiff and his two brothers. It is contended by the plaintiffs that in both the sale deeds it was mentioned that defendant No.1 is the absolute owner and possessor of the house property but he did not mention as to how he acquired the title and possession over the property. It is further contended by the plaintiff that though defendant Nos.2 and 3 alleged to have paid Rs.21,44,000/- and Rs.16,88,000/- respectively to defendant

No.1, there is no endorsement by the Sub Registrar that the amounts of sale consideration were paid in cash.

8. The learned counsel for the plaintiff contended that the trial Court ought to have seen that at paragraph No.5 of the plaint, the plaintiff has clearly stated the facts as to the cause of action for filing the suit. As per the averments of the plaint, in the month of October, 2021 an officer from the Municipal office, Ramachandrapuram came to the plaint schedule property for inspection stating that the defendant Nos.2 and 3 have applied for permission for making construction in the plaint schedule property and on that the plaintiff by letter dated 27.10.2021 addressed to the Additional Municipal Commissioner raised objection and opposed for granting of permission for construction sought for by the defendant Nos.2 and 3. Since the plaintiff is alleged to be in possession of the suit schedule property, execution of documents by defendant No.1 in favour of defendant Nos.2 and 3, who intended to make construction over the suit schedule property, would certainly cause prejudice to the plaintiff. In such circumstances, the acts of defendant No.1 in alienating the suit schedule property without any right, title and possession in favour of defendant Nos.2 and 3 and the intention of the defendant Nos.2 and 3 to make construction

over the suit schedule property would certainly constitute cause of action for the plaintiff to file the suit. Hence, the plaint filed by the plaintiff cannot be rejected on the ground of lack of cause of action.

9. One of the grounds raised by the learned counsel for the plaintiff is that it is not at all the plea of the defendants that in view of Section 31 of the Special Relief Act, the suit is not maintainable and so the plaint is liable to be rejected and further the question of maintainability of the suit can be decided only if a plea is taken by the defendants by filing written statement with the plea that the suit is not maintainable. The trial Court in the impugned order referred to Sections 31 and 34 of the Specific Relief Act and made out distinction between both the sections. It is to be seen that as per Clause (1) of Section 31 of the Specific Relief Act any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled. It is the contention of the defendant that since the plaintiff is not a party to the documents, which are being sought to be cancelled,

the suit is vexatious. The trial Court in the impugned order at paragraph No.14 observed that even if a person is not a party to the document, he can maintain a suit for declaration only. As per Section 34 of the Specific Relief Act, Any person who has any legal character or any legal rights as to any property by virtue of title deeds or otherwise may file a suit for declaration of those rights and for injunction against any person denying or interested to deny his title to such character or right.

10. There is a distinction between a suit for cancellation of a deed and a suit for declaration that a document is inoperative against the plaintiff. A suit for cancellation must be brought by a person, who was a party to the deed or by a person who is bound by it in law. However, a person who is neither a party to the deed nor bound by it does not need to sue for its cancellation. In a case, where the plaintiff seeks to establish their title but faces an obstacle due to a deed to which they may be a party, they must seek the cancellation of the deed. On the other hand, if the plaintiff seeks to establish their title and is threatened by a transaction between other parties, their remedy is to obtain a declaration that the decree, deed, or transaction is invalid as far as they are concerned. When a person is a party to the deed, they can overcome the effect of the deed only in a

manner provided under the Indian Contract Act, especially when third-party interests are involved. However, when a person is not a party to the deed but is affected by it in law, they can seek a declaration that the deed is not binding on them, as long as no third-party interest is created. The effect of obtaining a declaration that the sale deed is not binding on the plaintiff is that the sale deed becomes inoperative, and the purchaser under the sale deed cannot claim any rights under it. In the case on hand, the plaintiff has not only sought for cancellation of the sale deeds but also to declare the said sale deeds as not binding on him. It is not the case of the defendants that the sale deeds executed by defendant No.1 in favour of defendant Nos.2 and 3 are not binding on him. When the suit documents are effecting the possession of the plaintiff over the suit schedule property, then certainly the plaintiff has sufficient cause of action to file the suit.

11. The learned counsel for the plaintiff relied upon a decision in **Kuldeep Singh Pathania v. Bikram Singh Jarya**¹, wherein the Honourable Supreme Court observed that under order VII Rule 11 of the Code of Civil Procedure only pleadings

¹ 2017 (5) SCC 345

of plaintiff form basis for decision of Court but not rebuttal made by the defendant or any material produced by the defendant. As seen from the impugned order, the trial Court has not passed by the impugned order based on the rebuttal made by the defendant or any material produced by the defendant, as the defendant has not adduced any pleadings on his behalf before the trial Court. Hence, the above said decision is not helpful to the plaintiff.

12. It is the contention of the learned counsel for the plaintiff that while considering an application under Order VII Rule 11 of the Code of Civil Procedure, the Court has to go through the entire plaint averments and cannot reject the plaint by reading only lines and ignoring the other relevant parts of the plaint. In support of the said contention, the learned counsel for the plaintiff relied upon a decisions in **Sri Biswanath Banik and another V. Smt. Sulanga Bose and others²** and **Shaukathussain Mohammed Patel v. Khatunben Mohmmmedbhai Polara³**. Even for the sake of arguments if we presume that the suit is not maintainable as the plaintiff is not a party to the suit documents, which are sought to be cancelled,

² 2022 Live Law (SC) 280

³ (2019) 20 Supreme court Cases 226

in view of the principle laid down in the above said decision, it is to be seen that the plaintiff has filed the suit not only for cancellation of the sale deeds declaring that the said sale deeds are not binding on plaintiff but also for perpetual injunction. Since the plaintiff has filed the suit for perpetual injunction, the cause of action alleged to have taken place on the date on which the possession of the plaintiff is sought to be interfered. It is settled law that the plaint cannot be rejected in part as observed by the Honourable Supreme Court in **Kum. Geetha and others v. Nanjundaswamy and others**⁴. It is settled law that the plaint cannot be rejected merely because the plaintiff is not entitled for any relief as observed by the Honourable Supreme Court in **Gurdev Singh v. Harvinder Singh**⁵. If the plaintiff is not entitled for any relief, then certainly suit is liable to be dismissed but the same cannot be rejected by invoking Order VII Rule 11 of the Code of Civil Procedure.

13. It is pertinent to note that aggrieved by the impugned order, earlier the plaintiff has preferred CMA No.333 of 2022, which was allowed by this Court but in view of the review

⁴ 2023 LiveLaw (SC) 940

⁵ 2022 LiveLaw (SC) 963

petition filed by the defendant, the order passed in CMA No.333 of 2022 was set aside on the ground that CMA is not maintainable.

14. On the other hand the learned counsel for the defendant relied upon an authority in **Dahiben v. Arvindbhai Kalyanji Bhanusali (D) through LRs and others**⁶, wherein the Honourable Supreme Court observed that while considering an application under Order VII Rule 11 of the Code of Civil Procedure the Court must be vigilant against any camouflage or suppression, and determine whether litigation is utterly vexatious and an abuse of process of the Court. In the above said decision, there was no limitation to file the suit and that apart the cause of action shown by the plaintiffs therein was illusory. But in the case on hand the suit is not barred by any limitation and moreover the cause of action shown by the plaintiffs is appearing not to be illusory.

15. Further, the learned counsel for the defendant relied upon an authority in **K. Akbar Ali v. K. Umar Khan and others**⁷, wherein the Honourable Supreme Court observed as under:

“7. In any case, an application under Order VII Rule 11 of the CPC for rejection of the plaint requires a meaningful reading of the

⁶ MANU/SC/0508/2020

⁷ MANU/SCOR/08861/2021

plaint as a whole. As held by this Court in ITC v. Debts Recovery Appellate Tribunal reported in AIR 1998 SC 634, 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. Similarly the Court must see that the bar in law of the suit is not camouflaged by devious and clever drafting of the plaint. Moreover, the provisions of Order VII Rue 11 are not exhaustive and the Court has the inherent power to see that frivolous or vexatious litigations are not allowed to consume the time of the Court.”

16. In the above said decision, the case is based on general power of attorney and it was observed that in the absence of valid power of attorney, no right will accrue to the plaintiff, as such there is no cause of action for the plaintiff to file suit against first defendant. But in the case on hand, there is no such instance, more particularly, when the plaintiff herein has clearly mentioned the cause of action based on which the suit was filed against the defendants.

17. The learned counsel for the defendant relied upon an authority in **Vellayya Konar and others v. Ramaswami Konar and others**⁸, wherein the High Court of Madras observed as under:

“When the plaintiff seeks to establish a title in himself and cannot establish that title without removing an insuperable obstruction such as a decree to which he has, been a party or a deed to which he has been a party, then quite clearly he must get that decree or deed cancelled or declared void in toto and his suit is in substance a suit for the cancellation of the decree or deed even though it be framed as a suit for a declaration. But when he is seeking to establish a title and finds himself threatened by a

⁸ MANU/TN/0105/1939

decree or a transaction between third parties, he is not in a position to get that decree or that deed cancelled in toto. That is a thing which can only be done by parties to the decree or deed or their representatives. His proper remedy therefore, in order to clear the way with a view to establish his title is to get a declaration that the decree or deed is invalid so far as he himself is concerned and he must therefore sue for such a declaration and not for the cancellation of the decree or deed.”

18. In **Tekulapally Veera Reddy and others v. Tekulapally Narayana Reddy**⁹ the High Court for the erstwhile State of Andhra Pradesh observed as under:

“9. Admittedly neither of the plaintiffs were the executor or party to Ex. B1 and none of them asked for any declaration of their title to suit property apart from asking for simple relief of cancellation of Registered Sale Deed dated 1-9-1983 executed by late Sri Ram Reddy in favour of the defendant (Appellant). In those circumstances the suit of the plaintiff ought to have been dismissed in toto by the both the Courts below.”

19. As stated supra, the plaintiff has filed the suit not only for cancellation of the sale deed but also sought to declare the said sale deeds not binding on him and apart from seeking perpetual injunction. Hence, the above said decision is not helpful to the defendants.

20. The learned counsel for the defendant further relied upon an authority in **Muppudathi Pillai v. Krishnaswami Pillai and others**¹⁰ wherein the High Court of Madras observed as under:

“14. The provisions of Section 39 make it clear that three conditions are requisite for the exercise of the jurisdiction to cancel an instrument : (1) the instrument is void or voidable against the plaintiff; (2) plaintiff may reasonably apprehend serious injury by

⁹ MANU/AP/0951/2007

¹⁰ MANU/TN/0455/1959

the instrument being left outstanding ; (3) in the circumstances of the case the Court considers it proper to grant this relief of preventive justice. On the third aspect of the question the English and American authorities hold that where the document is void on its face the Court would not exercise its jurisdiction while it would | it it were not so apparent. In India it is a matter entirely for the discretion of the Court. '

15. The question that has to be considered depends on the 1st and 2nd conditions set out above. As the principle is one of potential mischief, by the document remaining outstanding, it stands to reason the executant of the document should be either the plaintiff or a person who can in certain circumstances bind him. It is only then it could be said that the instrument is voidable by or void against him. The second aspect of the matter emphasises that principle. For there can be no apprehension if a mere third party asserting a hostile title creates a document. Thus relief under Section 39 would be granted only in respect of an instrument likely to affect the title of the plaintiff and not of an instrument executed by a stranger to that title.

21. In the case on hand, the defendant No.1 in collusion with defendant Nos.2 and 3 alleged to have not only created sale deeds but also applied for permission of construction and based on the application of the defendant Nos.2 and 3, an officer from Municipal Office came for inspection of the suit schedule property. In such circumstances, more particularly, when the defendants are making attempts for construction over the suit schedule property, which is in possession of the plaintiff, it cannot be said that plaintiff cannot reasonably apprehend serious injury by the instrument being left outstanding.

22. In **Debi Prasad and others v. Maika and others**¹¹ the

¹¹ MANU/UP/0100/1972

High Court of Allahabad (Lucknow Bench) observed that possessory title does not entitle any person for decree of cancellation of written instrument unless requisite conditions under the section are satisfied. However, at paragraph No.5 of the said decision it was observed that when the plaintiff is seeking to establish that he is being threatened by a decree or a transaction between third parties, his proper remedy is to get a declaration that the decree or deed is invalid so far as he himself is concerned. Similarly in **Yanala Malleshwari and others v. Ananthula Sayamma and others**¹² the High Court for the erstwhile state of Andhra Pradesh observed as under:

“32. The law, therefore, may be taken as well settled that in all cases of void or voidable transactions, a suit for cancellation of a deed is not maintainable. In a case where immovable property is transferred by a person without authority to a third person, it is no answer to say that the true owner who has authority and entitlement to transfer can file a suit under Section 31 of the Specific Relief Act for the simple reason that such a suit is not maintainable. Further, in case of an instrument, which is void or voidable against executant, a suit would be maintainable for cancellation of such instrument and can be decreed only when it is adjudicated by the competent Court that such instrument is void or voidable and that if such instrument is left to exist, it would cause serious injury to the true owner.”

23. Even for the sake of arguments, if we presume that the suit is not maintainable as the plaintiff is not a party to the suit documents, which are sought to be cancelled, the suit cannot

¹² MANU/AP/0747/2006

be rejected because it is settled law that a plaint cannot be rejected in part, as the plaintiff has filed the suit not only for declaring the sale deeds not binding on him but also for perpetual injunction. Furthermore, as per the principle laid down in **Tekulapally Veera Reddy case** (supra), this Court is of the opinion that the suit of the plaintiff is in conformity with three ingredients of Section 31 of the Specific Relief Act. Moreover, the facts of the case in the above said decisions relied upon by the learned counsel for the defendant are entirely different from the facts of the case on hand, therefore, the principle laid down in the above said decisions cannot be made applicable to the facts of the case on hand. Though the trial Court has made some observations in the impugned order with regard to relief of cancellation of sale deeds, there is no whisper at all on the aspect of other relief sought by the plaintiff in the suit i.e., relief of declaring the said sale deeds not binding on him and also for perpetual injunction. Thus, it can be said that the trial Court has rejected the plaint in part i.e., only to the extent of relief of cancelling the sale deeds.

24. Thus, viewed from any angle, the trial Court ought not to have rejected the plaint of the plaintiff as the impugned order did not satisfy any of the ingredients incorporated under Order

VII Rule 11 of the Code of Civil Procedure. The plaintiff could successfully establish that the plaint is not liable for rejection under any of the grounds prescribed under Order VII Rule 11 of the Code of Civil Procedure. Hence, the impugned order is liable to be set aside.

25. In the result, this appeal is allowed and the impugned order and decree dated 08.06.2022 in I.A.No.505 of 2022 in O.S.No.34 of 2022 passed by the learned Senior Civil Judge – cum – Assistant Sessions Judge, Sangareddy is set aside. The learned Senior Civil Judge – cum – Assistant Sessions Judge, Sangareddy shall restore O.S.No.34 of 2022 to its original number and proceed in accordance with law. There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

JUSTICE M.G. PRIYADARSINI

Date: 29.04.2024

Note: LR Copy to be marked.
B/o. AS