

**\* THE HONOURABLE SRI JUSTICE N.V. SHRAVAN KUMAR**

**+ CIVIL REVISION PETITION No.1206 of 2023**

**% Dated 30-07-2024**

Between:

# Manchikatla Prabhakar

... Petitioner

and

\$ Manchikatla Venkata Swamy and others

.... Respondents

! Counsel for the Petitioner : Mr. P.Sridhar Rao

^ Counsel for the respondents :

< GIST : ---

>HEAD NOTE : ---

? Cases referred: :

1. AIR 1981 ORISSA 52
2. 2010 (5) ALT 411
3. (2020) 7 SCC 366
4. (2021) 14 SCC 51
5. (2021) 7 Supreme Court Cases 456
6. (2003) 1 Supreme Court Cases 557

**THE HONOURABLE SRI JUSTICE N.V. SHRAVAN KUMAR****Civil Revision Petition No.1206 of 2023****ORDER:**

This revision petition has been filed against the docket order dated 10.03.2023 passed in SR. No.14 of 2023 in un-registered suit of 2023 on the file of the Additional District Judge, Godavarikhani.

2. The revision petitioner herein is the plaintiff and the respondents/defendants 1 to 4 herein are the natural brothers, respondent/defendant No.5 is the only daughter and the respondent/defendant No.6 is their mother.

3. It is the case of the revision petitioner that he filed unregistered suit of 2023 for partition and separate possession over the suit schedule properties. The learned trial Court at the initial stage had taken certain objections for which the petitioner answered and the learned trial Court having not satisfied with the same, had rejected the plaint holding that the revision petitioner/plaintiff did not file the market valuation certificates of all the suit schedule properties except Item No.14/A, 14/B and 14/C to assess the correct valuation of the suit schedule properties and failed to produce the documents showing the joint family funds for acquiring and for subsequently constructing the suit schedule properties by the defendants No.1 and 2 and also that the plaintiff did not file the documents to show the ownership of the schedule properties of Item No.1 to 15 except Item No.14/A, 14/B and 14/C and failed to comply with the objections. Assailing the

same, the revision petitioner/plaintiff filed the present revision petition.

4. The learned counsel for the revision petitioner would submit that the learned trial Court had mainly rejected the plaint for non filing of the original documents/certified copies including the market value certificate of the suit scheduled property which can be summoned from the respondents/defendants at a later point of suit trial. The learned trial Court without doing so had rejected the plaint in toto. To substantiate the case of the revision petitioner/plaintiff, the learned counsel has placed reliance on the judgment reported in the case of **Jaganath Misra and others Vs. Lokanath Misra and another**<sup>1</sup> and would submit that the presumption of law is that all Hindu families are joint unless the contrary is proved and the onus is on the defendants to prove that there has been severance of the joint status. He also placed reliance in the case of **Mohd.Osman Ali Vs. Second Junior Civil Judge, City Civil Court, Hyderabad and another**<sup>2</sup> and would submit that at the stage of scrutiny and registration of suit it is no part of duty of Court to insist on production of sufficient documentary evidence in support of his prayer in the suit and the plaintiff loses the suit if he does not produce proper material.

5. Heard the learned counsel for the revision petitioner/plaintiff and perused the material made available on the record.

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<sup>1</sup> AIR 1981 ORISSA 52

<sup>2</sup> 2010 (5) ALT 411

6. The main grievance of the revision petitioner/plaintiff is that the learned trial Court ought not to have rejected the plaint during the course of scrutiny and the respondents/defendants could be summoned during the course of trial for the required documents.

7. In the grounds urged by the revision petitioner it is submitted that the Order under revision is against the basic principles of law and against the scope of Order VII Rule 11 of CPC and against the settled positions of law relating to the legal presumptions available to plaintiff in a suit for partition and separate possession among Hindus as they all are governed by Hindu Mithakshara Law. It is also urged that every Hindu Family is deemed to be a Joint Family unless the contrary is proved with sufficient documentary proof and evidence. The trial Court has failed to consider the *prima faice* case for ensuing the pecuniary and territorial jurisdiction of the Court and also against the settled law filing of originals of any document is always a subject matter of its proof and relevancy at the time of trial of suit.

8. For better appreciation of the case, Order VII Rule 11 and the Order VII Rul1 14 of the Code of Civil Procedure, 1908 are extracted hereunder.

“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 returned 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.]”

“[14. **Production of document on which plaintiff sues or relies.**—(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

[(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.]

(4) Nothing in this rule shall apply to document produced for the cross-examination of the plaintiffs witnesses, or handed over to a witness merely to refresh his memory.]

9. In the case on hand, admittedly, the revision petitioner/plaintiff did not file the required/claimed documents showing the joint family funds for acquiring and subsequently constructing the suit schedule properties by the respondents/defendants No.1 and 2 to show the ownership of the schedule properties and there is no cause of action for filing the suit. Further, the revision petitioner/plaintiff did not file the market valuation certificates of all the suit schedule properties to assess the correct valuation of the suit schedule properties.

10. Upon a perusal of the docket order, the trial Court recorded that the documents relating to the joint family funds for acquiring and for subsequently constructing the suit properties by the defendant No.1 and 2 are not filed and as such how the plaintiff is entitled for

partition is to be clarified when there is no mention in any of the documents about the plaintiff and no document is filed that the plaintiff and D-1 and D-2 are joint owners of the suit schedule properties. More so, as per the documents, the suit schedule properties are in joint possession of other defendants and that the plaintiff is in out of possession of the suit properties. Hence, required Court Fee shall be paid on the 3/4<sup>th</sup> share value of the plaintiff as per Section 34(1) of TSCF and SV Act. Valuation certifies issued by the competent authority are to be filed in respect of all the suit schedule properties, as the valuation certificates in respect of Item No.14-1 to 14-C only are filed. Valuation of Rs.91,45,02,486/- was not shown clearly, as per the schedule of properties Item No.1 to 15. All the documents which are filed in the list of documents along with the plaintiff, the sufficient copies of plaint, documents, etc., shall be filed to furnish to all the defendants. Postal covers along with stamps for all the defendants in the suit and I.A., are not filed. Original/certified copies of documents shall be filed as all the documents are No.1 to 15 are photocopies.

11. Thereafter, the revision petitioner/plaintiff has resubmitted the suit by making the following endorsements for the objections.

12. As far as objection No.1 it is submitted that no such documents are available with the plaintiff right now as such it cannot be filed at present. As regards objection No.2, it is submitted that the relationship among the parties to the plaint and the origin and source

of acquiring the suit properties by their deceased father and for such day to day life in the joint family, no documents will be available, however, it is a matter to be decided at the time of trial of the suit. Insofar as objection No.3, it is submitted that the fixed Court fee paid is sufficient under Section 34(2) of TSCF and SV Act. In respect of objection No.4, it is submitted that the plaintiff could not obtain such valuation certificates for all the suit properties because of the inconvenience and problems being created by the defendant No.2 to 4. In case of necessity, the same can be summoned to be produced through Court of law for deciding the actual market value of the suit properties for any purpose during pendency of the suit.

13. The learned trial Court has observed that when the plaintiff sought relief claiming the share in respect of the suit schedule properties, burden lies on him to show the *bona fide* documents that the properties acquired and further constructed the suit schedule properties with the joint family funds, but the plaintiff failed to do so and the plaintiff did not file any document showing the suit schedule properties are joint family properties and the documents filed were in the name of the third parties and as such it is deemed that the plaintiff is not in possession of the properties. The learned trial Court further held that without assessing the valuation of the suit schedule properties involved in the suit, how the plaint is maintainable and the plaintiff has to come to the Court by securing all the valuation of the suit schedule properties in which how much his share is involved to



be specifically claimed and he simply valued the plaint by assessing the market valuation of schedule properties as per his choice and yet for another reason that the suit schedule properties are in different areas and different structures and the documents filed are in the name of the third parties other than the defendants, who are not made parties to the present suit and therefore, it is not just and proper to implead the properties of third parties when there is no *bona fide* documents. Recording the aforesaid reasons, the plaint was rejected by the learned trial Court.

14. At this juncture, it is not out of place to refer the judgment of the Hon'ble Apex Court in the case of **Dahiben Vs. Arvindbhai Kalyanji Bhanushali**<sup>3</sup> wherein held as under:

“The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint.”

In the case of **K.Akbar Ali Vs. Umar Khan**<sup>4</sup>, the Hon'ble Apex Court held as under:

In any case, an application under Order VII Rule 11 of the CPC for rejection of the plaint requires a meaningful reading of the plaint as a whole. As held by this Court in **ITC v. Debts Recovery Appellate Tribunal** reported in **AIR 1998 SC 634**,

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

<sup>4</sup> (2021) 14 SCC 51

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 Rule 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.

15. In the judgment referred one supra by the learned counsel for the petitioner, wherein full fledged trial was conducted but in the case on hand, the revision petitioner/plaintiff instead of filing relevant documents and complying with the objections has filed the present revision petition.

16. In the case of two supra, the issue is return of plaint on the ground of insufficiency of material in support of relief sought for. But in the case on hand, there are many other reasons apart from production of relevant documents. As such, the facts are directly not applicable to the facts of the present case.

17. Even otherwise, the order which is being questioned in the present revision petition arises is on the rejection of the plaint and that the revision petitioner submits that the scope and ambit of rejecting the plaint is against the basic principles of law and rule. At this stage, it is relevant to refer the judgment rendered in the case

of **Sayyed Ayaz Ali Vs. Prakash G.Goyal and others**<sup>5</sup> wherein the Hon'ble Supreme Court has observed that the order of trial Court rejecting the plaint is covered in definition of decree in Section 2(2) CPC and such order of trial Court is subject to a first appeal under Section 96 CPC and that the proper remedy against an order of rejecting the plaint is first appeal under Section 96 CPC. The relevant paras No.18 and 19 are extracted hereunder:

“18. Order 7 Rule 13 provides that the rejection of the plaint “on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action”.

19. The definition of “decree” in Section 2(2) “shall be deemed to include the rejection of a plaint”. Hence, the order of the trial court rejecting the plaint is subject to a first appeal under Section 96 CPC. The writ petition filed by the appellant was liable to be rejected on that ground. We therefore affirm the judgment of the High Court rejecting the writ petition, though for the above reason leave it open to the appellant to pursue the remedy available in law.”

18. In the case of **Saleem Bhai and others Vs. State of Maharashtra and others**<sup>6</sup> wherein the Hon'ble Supreme Court has held that the Court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit – before registering the plaint or after

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<sup>5</sup> (2021) 7 Supreme Court Cases 456

<sup>6</sup> (2003) 1 Supreme Court Cases 557

issuing summons to the defendant at any time before the conclusion of the trial. The relevant para 9 is extracted hereunder:

“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 purpose of deciding an application under clauses (1) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; ....”

19. It is significant to note that the Order VII Rule 14(1) of CPC clearly envisages that where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint, which the revision petitioner/plaintiff in the present case had not complied with.

20. Having gone through the judicial pronouncements wherein the learned counsel for the revision petitioner/plaintiff placed reliance are not applicable to the present case.

21. From the above all, it could be safely concluded that the objections raised by the learned trial Court attracts the provisions under Order VII Rule 11 and revision petitioner/plaintiff ought to have complied with the provisions of Order VII Rule 14 of the CPC and the learned trial Court, having not satisfied with the resubmission endorsements made by the revision petitioner/plaintiff, has rightly rejected the revision petitioner/plaintiff's suit and this Court do not find any illegality or infirmity to interfere with the impugned order dated 10.03.2023 passed in S.R. No.14 of 2023 in unregistered suit of 2023 on the file of the Additional District Judge at Godavarikhani and this revision petition is liable to be dismissed.

22. Having regard to the facts and circumstances of the case and the submissions made by the learned counsel for the revision petitioner/plaintiff and taking into consideration the aforesaid judicial pronouncements, this Civil Revision Petition is dismissed. However, it is made clear that this order does not preclude the petitioner/plaintiff to file fresh suit/plaint and to pursue the remedies as available under law. There shall be no order as to costs.

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

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**JUSTICE N.V. SHRAVAN KUMAR**

**Date: 30.07.2024**

**Note: L.R. copy be marked.**

**B/o.  
LSK**