



IN THE HIGH COURT OF ANDHRA PRADESH

C.R.P.No.1318 of 2020
And
C.R.P.Nos.1169 & 1397 of 2021

C.R.P.No.1318/2020

Between:

- # 1. Lakshmi Ramakrishna W/o. B. Ramakrishna (D8), R/o. Flat No.102,
Royal Meadows, 3-4-144/1/A, Barkatpura, Hyderabad – 500 027
2. Padmini Rao W/o. Murali R. Rao (D7), R/o. 1B, Vishal Bharathi
Apartment, Kilpauk, Chennai – 600 010
3. Nirmala Kodanda Ram W/o. Patri Kodanda Ram, (D6), R/o. 12B,
DDA, MIG Flats, Sarai Jullena, New Delhi-110 025.

... Petitioners

AND

\$ Dundi China Venkata Reddy, S/o. Sriramulu Reddy
R/o. Agathavara Padu, Peddakakani Mandal,
Guntur District.

... Respondent

C.R.P.No.1169/2021

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**C.R.P.No.1397/2021**

Between:

Patri Tulasi W/o. P.A.S Rao, R/o. Flat No.302,
Royal Meadows, 3-4-144/1/A, Street No.8
Barkatpura, Hyderabad – 500 027.

... Petitioner

AND

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R/o. Agathavara Padu, Peddakakani Mandal,
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... Respondent

Date of Judgment pronounced on : 03.03.2022**HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

1. Whether Reporters of Local newspapers
May be allowed to see the judgments? : Yes/No
2. Whether the copies of judgment may be marked
to Law Reporters/Journals: : Yes/No
3. Whether The Lordship wishes to see the fair copy
Of the Judgment? : Yes/No



***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

***HONOURABLE SRI JUSTICE R. RAGHUNANDAN RAO**

+C.R.P.No.1318 of 2020

And

+C.R.P.Nos.1169 & 1397 of 2021

% Dated:03.03.2022

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Guntur District.

... Respondent

! Counsel for Petitioners : Sri P.A.S. Rao, representing
Sri Akirati Ramakrishna

^Counsel for Respondent : Sri V.V. Satish

<GIST:

>HEAD NOTE:

? Cases referred:

1. (1999) 3 SCC 457
2. 2015 SCC OnLine Del 14356 : (2016) 226 DLT 349 : (2016) 154 DRJ 355
3. 2005 SCC OnLine AP 835 = (2006) 1 ALD 583 (DB) : (2006) 1 ALT 215 (DB)
4. 2011 SCC OnLine Cal 231
5. (2005) 13 SCC 511
6. (2009)10 SCC 541
7. 2021 SCC OnLine SC 764
8. AIR 2003 Ker 171
9. (2017) 13 SCC 174
10. (1989) 2 SCC 163

**HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO****C.R.P.No.1318 of 2020**
And
C.R.P.Nos.1169 & 1397 of 2021**COMMON ORDER:**

These civil revision petitions arise out of the proceedings in O.S.No.617 of 2015, raising the same issues, as such, they are being disposed of by way of this common order.

2. One Sri Dundi China Venkata Reddy (hereinafter referred to 'the plaintiff') had filed O.S.No.617 of 2015 before the 1st Additional District Judge, Guntur, against 20 defendants. Defendants 6 to 8 are the petitioners in C.R.P.No.1169 of 2021 and C.R.P.No.1318 of 2020. The 5th defendant is the petitioner in C.R.P.No.1397 of 2021.

3. The case of the plaintiff is that his father had purchased an extent of Ac.1.96 ½ cents of land in Sy.No.3 of Agthavarappadu Village, Pedakakani Mandal, Guntur District, by way of separate deeds of sale. Similarly, his mother, Smt. Dundi Venkata Ratnamma, had purchased Ac.1.00 of land and inherited Ac.1.00 of land through her mother Smt. Pittu Annapurnamma in Sy.No.3 of Agthavarappadu Village. Smt. Pittu Annapurnamma is said to have passed away, intestate, on 19.09.1988, after which Smt. Dundi Venkata Ratnamma inherited the said Ac.1.00 of land belonging to Smt. Pittu Annapurnamma. Thereafter, Dundi Sriramulu Reddy, the father of the plaintiff passed away on 12.10.1997 leaving behind his wife Smt. Dundi Venkata Ratnamma, 4 sons and a daughter. All these persons are said to have partitioned the aforesaid Ac.3.96½ cents of land even before the demise of Sri Dundi Sriramulu Reddy and in any event executed a partition deed and registered the same on 03.04.2014 under Document No.2346/2014 in the office of the sub-



registrar, Koritepadu. The parties to this deed of partition were Smt. Dundi Venkata Ratnamma, her 4 sons including the plaintiff herein, and her daughter. The plaintiff had been given absolute ownership over 'D' schedule property, which corresponds to 18 plots of land in the layout of the said Ac.3.96½ cents.

4. The plaintiff had thereafter filed O.S.No.617 of 2015 against 20 defendants. The plaintiff claims that defendants 1 and 2 in the said suit had brought into existence a fake and forged agreement of sale dated 15.11.1989 said to have been executed by late Smt. Pittu Annapurnamma in favour of the 1st defendant and subsequently created a fake, forged and false general power of attorney dated 02.06.1990 registered as document No.395/1990 before the District Registrar, Guntur, allegedly by Smt. Pittu Annapurnamma in favour of the 2nd defendant. On the basis of the said fake and forged agreement of sale, and fake and forged general power of attorney, defendants 1 and 2 are said to have alienated various plots, which are part of the lands comprising the plaint schedule property, in favour of various purchasers, who are also made parties to the suit as defendants 3 to 20.

5. On the basis of the above pleadings, the plaintiff sought declaration of title under the registered deed of partition dated 03.04.2014; a declaration that the agreement of sale dated 15.11.1989 allegedly executed, by late Smt. Pittu Annapurna, in favour of the 1st defendant and the registered general power of attorney dated 02.06.1990 allegedly executed in favour of the 2nd defendant by Smt. Pittu Annapurnamma, are fake and forged documents, which are invalid and unenforceable under law and for further declaration that the consequential execution of registered sale deeds by the 2nd defendant in



favour of other defendants or their purchasers are equally invalid and illegal.

6. The consequential reliefs sought on the basis of the said declaration was for delivery of physical possession of the plaint schedule property from the defendants and for mesne profits from the date of the suit till the plaintiff is put in physical possession of the suit schedule property.

7. After the filing of the suit, defendants 6 to 8 moved I.A.No.1309 of 2019 and defendant No.5 moved I.A.No.1302 of 2019 under Order VII Rule 11 C.P.C., for rejection of the plaint. These two applications were dismissed by the trial Court on 18.02.2020. Defendants 6 to 8 also moved I.A.No.374 of 2020 under Order II Rules 3 and 4, read with Section 151 C.P.C., for dismissal of the suit. This application was dismissed on 13.08.2021. Aggrieved by the said orders of dismissal, the aforesaid defendants have moved these three civil revision petitions before this Court.

8. The contentions raised by the petitioners in these revision petitions can be summarised as follows:

- a. There is no cause of action against the petitioners herein for the plaintiff to file the suit.
- b. The suit is undervalued and the Court fee paid is not correct.
- c. There is a discrepancy in the small cause title and long cause title in respect of the description of the plaintiff.
- d. The suit is barred by limitation and the same has to be decided as preliminary issue, before going into the main case.
- e. The plaintiff has no right and title over the suit schedule property and as such the suit could not have been filed.



- f. The sale deed executed by the G.P.A. holder on behalf of the executant has no relation with the plaintiff and no case could have been filed.
- g. The provisions of Order II Rules 3 & 4 do not permit the joining of several causes of action against several persons, when they are not jointly interested in the same property, as their interests are independent and separate in several plots of land.
- h. Order II Rule 4(c) C.P.C., would permit a single suit in respect of immovable property only where the relief sought is based on the same causes of action. As several causes of action against several persons have been joined in violation of Order II Rule 4(c) C.P.C., the suit is liable to be dismissed.

9. The plaintiff had contested these applications stating that the alleged agreement of sale dated 15.11.1989 and the alleged G.P.A. dated 25.06.1990 are fake and forged documents and cannot be the source of title for any of the defendants including the petitioners. The plaint pleadings also show that the interests of the defendants are not independent and as such the grounds raised by the petitioners are incorrect and require to be rejected.

10. The trial Court, in the applications filed under Order VII Rule 11 C.P.C. took the view that the relief of declaration of title is based on the registered deed of partition dated 03.04.2014 and on the ground that the alleged agreement of sale dated 15.11.1989 and the general power of attorney dated 25.06.1990 being fake and forged documents and as such consequential execution of sale deeds by 2nd defendant in favour of the other defendants would have to be treated as illegal. The trial Court took a further view that in view of these common causes, there is a common



cause of action. The trial Court also considered the question of inadequate Court fee and held that since the plaintiff had given an undertaken to pay any deficit in the Court fee, the said issue can be considered later. On the question of limitation, the trial Court held that the issue is a mixed question of law and fact and the same cannot be concluded at this stage. Apart from this, the trial Court also took into account the contention of the plaintiff that Smt. Pittu Annapurna had passed away on 19.09.1988 and could not have executed the general power of attorney dated 25.06.1990. The trial Court also refused to take into account the mistake in the name of the plaintiff in the short cause title and long cause title as the same could always be corrected.

11. In the applications filed under Order II Rules 3 and 4 C.P.C., the trial Court took the view that two or more defendants may be joined as parties in one suit even if there are two or more causes of action, provided the right to relief claimed arises from the same fact or transaction and there is a common question of law. The trial Court held that the facts of the present case meet this requirement and the applications are not maintainable. The trial Court also took the view that non-joinder or mis-joinder does not go to the root cause of the case and that the provisions of Order II C.P.C., do not deal with dismissal of the suits, as these objections can always be raised under Order VII C.P.C., and the Court could always direct the plaintiff to elect as to which one of them shall be proceeded with in the suit. Aggrieved by the said orders, the petitioners have approached this Court.

12. Sri P.A.S. Rao, learned counsel appearing for Sri Ramakrishna Akurati, learned counsel for the petitioners contends that the



orders of the trial Court are not in accordance with law and enunciated in the judgments cited below:

- 1. Iswar Bhai C. Patel vs. Harihar Behera and anr.,¹;**
- 2. Microsoft Corporation & Anr. Vs. Mr. Sujan Kumar & Ors.²;**
- 3. Chowdri Kalyan Chand & Ors., vs. V.R. Dwarkanath and Ors.,³;**
- 4. Gitarani Dan & Ors. vs. Manik Chandra Dan & Ors.,⁴**
- 5. Harkirat Singh vs. Amrinder Singh⁵;**
- 6. Ram Sukh vs. Dinesh Aggarwal⁶;** and
- 7. Rajendra Bajoria and Ors., vs. Hemant Kumar Jalan and Ors.,⁷.**

13. Sri V.V. Satish, learned counsel appearing for the plaintiff contended that the civil revision petitions based against the order of dismissal of the applications filed under Order VII Rule 11 are not maintainable as an appeal would have to be filed against the said order. He would further argue that the provisions of Order II Rules 3 and 4 cannot be the basis of dismissal of a suit as Section 99 C.P.C., provided that such defects cannot be the basis for dismissal of a suit. He submits that in any event, there are no defects of the nature contended by the petitioners. He would further submit that the judgment cited by the learned counsel for the petitioners are not applicable to the facts of the present case as the facts of the cited judgments would show that separate

¹ (1999) 3 SCC 457

² 2015 SCC OnLine Del 14356 : (2016) 226 DLT 349 : (2016) 154 DRJ 355

³ 2005 SCC OnLine AP 835 : (2006) 1 ALD 583 (DB) : (2006) 1 ALT 215 (DB)

⁴ 2011 SCC OnLine Cal 231

⁵ (2005) 13 SCC 511

⁶ (2009)10 SCC 541

⁷ 2021 SCC OnLine SC 764



causes of action were included in those judgments while there is no such defect in the present case.

Consideration of the Court:

14. Before advertng to the main controversy, the objection raised by Sri V.V. Satish, learned counsel for the plaintiff, as to the maintainability of the revision petitions has to be answered. An order of rejection of plaint, under Order VII Rule 11 C.P.C., would amount to a final disposal of the suit and the said order would amount to a judgment and decree. In such cases, only an appeal under Section 96 of C.P.C., read with other relevant provisions, would be maintainable. In such circumstances, a revision petition would not normally be maintainable. However, the Hon'ble High Court of Kerala in **Razack Trading Company, Ariyaloor vs. J.K. Industries Ltd., New Delhi**⁸, at paragraph Nos.11 to 14, held as follows:

11. I am fully aware of the fact that an order passed by a civil Court regarding the rejection of the plaint is given the force of a decree in view of the definition of the decree given under Section 2(2) of the Code of Civil Procedure and the normal remedy available to the plaintiff is to file an appeal or review as held by a Division Bench of this Court in **Gopalan Nair v. Bhaskaran, (2002) 1 Ker LJ 1 : (AIR 2002 Kerala 248)**. The averments in the Original Petition show that a petition for review was filed and the same was dismissed.

12. Since the suit was filed after 1-7-2002 provisions contained in old Rule 19-A of Order V is not applicable to this case and the order passed is one in excess of the jurisdiction vested in the Court. That being the position I am of the view that it is not necessary to compel the petitioner to resort to the alternate remedy of filing the appeal and the illegality committed by the Court below is to be corrected by

⁸ AIR 2003 Ker 171



invoking powers conferred on this Court under Article 227 of the Constitution of India.

13. In ***Rajendran v. Union of India, (1996) 2 Ker LT 467*** a learned single Judge of this Court found that the supervisory jurisdiction under Art. 227 of the Constitution is limited to see that an inferior Court or Tribunal functions within its limits of its authority and not to correct an error apparent on the face of the record much less an error of law. In ***Whirlpool Corporation v. Registrar of Trade Marks, (1998) 8 SCC 1 : (AIR 1999 SC 22)*** the Supreme Court held as follows:—

“Therefore, the jurisdiction of the High Court in entertaining a writ petition under Art. 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially, in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.”

In K. Sreedharan v. Thajudeen Koya, (1996) 1 Ker LJ 246 : (1996 Lab IC 842) a learned single Judge of this Court has found that a judgment rendered by a civil Court having no jurisdiction can be interfered with under Art. 226 of the Constitution. It was held as follows:

“Normally, this Court will not be Justified in interfering with the decree passed by a competent civil Court in exercise of the extra ordinary jurisdiction of this Court under Article 226 of the Constitution. But such judgment and decree shall he passed by a competent civil Court, having jurisdiction to try the case. But, in this case, it cannot be held that the Munsiff has jurisdiction to entertain and try the above case in the light of the statutory injunction contained in Section 19(2) of the Act. Therefore, it must be held that such a judgment and decree can be interfered with by this Court in the extra ordinary jurisdiction of this Court under Article 226 of the Constitution.”

In ***S.T. Distilleries v. Assistant Commissioner of Commercial Taxes, (1999) 1 Ker LJ 506*** a Division Bench held that an alternate remedy is not an absolute bar



for maintainability of a writ petition under Article 226 of the Constitution. It was held as follows:—

“Alternate remedy is not an absolute bar for the maintainability of a writ petition under Article 226 of the Constitution where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been violation of principles of natural justice or where the order or proceedings are wholly without jurisdiction.”

14. I view of the well settled principles of law laid down by the Apex Court and this Court I am of the view that it is only just and proper to quash the order passed by the Court below rejecting the plaint in exercise of power conferred on this Court under Article 227 of the Constitution of India and direct the Court below to dispose of the plaint in accordance with law.

In the result, the Original Petition is allowed. The order passed by the learned Sub-Judge in O.S.No.140 of 2002 on 16.11.2002 rejecting the plaint under Order VII, Rule 11 of the Code of Civil Procedure is quashed. The learned Sub Judge is directed to dispose of the plaint in accordance with law.

15. I am in respectful agreement with the views expressed by the Hon'ble High Court of Kerala. However, there would be no necessity for this Court to base its order on the above observations. The present case is not a case of revision being filed against the order allowing an application under Order VII Rule 11 C.P.C. This is a case where the application under Order VII Rule 11 had been dismissed. In such a situation, there is no judgment or decree which can be appealed against under the provisions of Section 96 C.P.C. The objection of the plaintiff, in this regard would have to be fail.

16. Both sides have argued extensively on the facts of the case and the law. This Court does not propose to go into the details of these



arguments on facts and law, as the same are not required due to the manner in which this court proposes to dispose these petitions

17. Before considering the material before this court, it would be appropriate to consider the scope of an application under Order VII, Rule 7 and the scope of the term 'cause of Action'.

18. In **Madanuri Sri Rama Chandra Murthy v. Syed Jalal**⁹, the Hon'ble Supreme court, set out the scope of Order VII, Rule 11 in the following manner:

"7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. 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 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

19. In **A.B.C. Laminart (P) Ltd. v. A.P. Agencies**¹⁰ the Hon'ble Supreme court sets out the contours of the term 'cause of action', as follows:

⁹ (2017) 13 SCC 174



12. A cause of action 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. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.

20. The case of the plaintiff has been that the plaintiff and his family members were owners and possessors of Ac.3.96 cents. An extent of Ac.1.96½ cents being purchased by his father, Ac.1.00 being purchased by his mother Smt. Dundi Venkata Ratnamma and Ac.1.00 of land having been inherited from his maternal grand-mother Smt. Pittu Annapurnamma. These lands were the subject matter of the deed of partition dated 03.04.2014. After the said deed of partition, the plaintiff has approached this Court for setting aside various deeds of sale said to have been executed about 20 years before the deed of partition and about 25 years before the filing of the suit. The cause of action for the suit is said to be the action of the 1st defendant in obtaining a fake and fabricated agreement of sale dated 15.11.1989 and a fake and fabricated power of attorney obtained by the 2nd defendant dated 25.06.1990 from Smt. Pittu Annapurnamma, who is the maternal grand-mother of the plaintiff. The plaintiff had also filed the deeds of sale said to have been executed in favour of the other defendants, on the basis of these fabricated documents, and sought these deeds of sale to be set aside. The

¹⁰ (1989) 2 SCC 163



deeds of sale under which the petitioners herein had obtained title to the plots in their name, mentioned at Sl.Nos.11 to 14 in the list of documents is attached to the plaint. Copies of these documents have also been placed before this Court by the petitioners. The plaintiff does not dispute that the copies of the documents, which were placed before this Court, are the documents mentioned in the list of documents at Sl.Nos.11 to 14 of the plaint.

21. In view of this mention of documents in the plaint and in view of the fact that they have been filed along with the plaint, the said documents would have to be treated as being part of the plaint.

22. A perusal of these documents would show that these documents were executed by the 2nd defendant as the power of attorney holder of Smt. Dundi Venkata Ratnamma, who is the mother of the plaintiff. These are not documents, which are executed by the 2nd defendant, either on the basis of the agreement of sale dated 15.11.1989 executed by Smt. Pittu Annapurnamma or power of attorney dated 25.06.1990 executed by Smt. Pittu Annapurnamma. Except the allegation that these two documents were not executed by Smt. Pittu Annapurnamma, the plaintiff has not made any allegation relating to the power of attorney said to have been executed by Smt. Venkata Ratnamma in favour of the 2nd defendant. In fact the description of the deeds of sale at Sl.Nos.11 to 14 itself states that these deeds of sale were executed, by the 2nd defendant, as the general power of attorney of Smt. Venkata Ratnamma.

23. As noticed above, the entire suit is based on the pleading of the plaintiff that Smt. Pittu Annapurnamma never executed any agreement of sale or power of attorney on the basis of which the 1st and



2nd defendants could have executed deeds of sale in favour of the other defendants, including the petitioners herein, who were arrayed as defendants 5 to 8. However, the plaint documents itself show that the documents executed in favour of the petitioners, by the 2nd defendant, are based on a power attorney that is said to have been given by Smt. Dundi Venkata Ratnamma and not Smt. Pittu Annapurnamma. In these circumstances, no cause of action had been made out against the petitioners herein. In that view of the matter, it must be held that the applications under Order VII Rule 11 have not been appreciated properly by the trial Court.

24. Accordingly, C.R.P.Nos.1318 of 2020 and 1397 of 2021 are allowed and the order of the trial Court in I.A.No.1301 of 2019 in C.R.P.No.1318 of 2020 and I.A.No.1302 of 2019 in C.R.P.No.1397 of 2021 are set aside and the said applications are allowed.

25. In view of the orders passed in C.R.P.No.1318 of 2020 and C.R.P.No.1397 of 2021, no further orders would require to be passed in C.R.P.No.1169 of 2021. Accordingly C.R.P.No.1169 of 2021 is closed. Consequently, plaint in O.S.No.617 of 2015 in the Court of I Additional District Judge, Guntur is rejected to the extent of defendants 5 to 8 in the suit. There shall be no order as to costs.

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

R. RAGHUNANDAN RAO, J.

3rd March, 2022
Js.



HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

C.R.P.No.1318 of 2020
And
C.R.P.Nos.1169 & 1397 of 2021

3rd March, 2022

Js.