



HIGH COURT OF ANDHRA PRADESH
MONDAY ,THE TWENTY FIRST DAY OF FEBRUARY
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE MS JUSTICE B S BHANUMATHI
CIVIL REVISION PETITION NO: 6921 OF 2018

Between:

1. Panchakarla Nagamani, W/o.Srinivasa Kasi Viswanadh, Aged about 48 Years, Occ.Business, R/o.TF-1, Sri Sai Sowdha Group House, Prasadampadu, Vijayawada Rural Mandal, Krishna District, Andhrapradesh
KRISHNA
2. Gudivaka Ramanjaneyulu, S/o.Raja Rao, Hindu, Aged About 42 years, R/o.D.No.4-63, Behind Co-Operative Bank, Prasadampadu, Vijayawada Rural Mandal, Krishna District, Andhrapradesh
3. Panchakarla Srinivasa Kasi Viswanadh, S/o.Late. Ranga Rao, Aged about 52 Years, Occ. Properties, R/o.TF-1, Sri Sai Sowdha Group House, Prasadampadu, Vijayawada Rural Mandal, Krishna District, Andhrapradesh.

...PETITIONER(S)

AND:

1. Chode Kanaka Mahalakshmi, W/o.Guntupalli Murali Mohan, Hindu, Aged About 41 years, R/o.SF-4, Sri Sai Sowdha Group House, Prasadampadu, Vijayawada Rural Mandal, Krishna District, Andhrapradesh
KRISHNA
4. Valiveti Sivarama Krishna, S/o.Sarveswara Rao, Hindu, Aged about 31 Years, Occ. Private Employee, R/o.SF-2, Sri Sai Sowdha Group House, Prasadampadu, Vijayawada Rural Manda, Krishna District, Andhrapradesh .Respondents/Plaintiff No.1 and 2
5. The Gram Panchayat, Prasadampadu Village, Rep.by its Secretary, Prasadampadu, Vijayawada Rural Mandal, Krishna District. Andhrapradesh.
6. The Commissioner, Andhrapradesh Capital Region Development Authority (APCRDA), Vijayawada.
7. Kanijam Venkata Satish, S/o.Siva Rao, Hindu, Aged about 44 years, Occ.Builder, R/o.Jenitha Towers, Flat No.SF-1, Kottevari Street, Ramavarappadu, Vijayawada Rural Mandal, Krishna District, Andhrapradesh

...RESPONDENTS

Counsel for the Petitioner(s): DEVALARAJU ANIL KUMAR



Counsel for the Respondents: D RAMAKRISHNA
The Court made the following: ORDER

2022:APHC:5043

**THE HON'BLE Ms. JUSTICE B. S. BHANUMATHI****Civil Revision Petition no.6921 of 2018****ORDER:**

This Civil Revision Petition is directed against the orders dated 23.07.2018 of the learned Rent Controller-cum-IV Additional Junior Civil Judge, Vijayawada, dismissing the application in I.A.No.358 of 2017 in O.S.No.116 of 2017 filed by the defendants 1 to 4 under Order VII Rule 11 of the Code of Civil Procedure ('the Code', for short) requesting to reject the plaint .

2. Heard Sri D.Anil Kumar, learned counsel for the revision petitioners. There is no representation for the contesting respondents 1 and 2. Learned counsel for the revision petitioners submit that respondents 3 and 4 are not necessary parties to this revision as they have not filed any counter before the trial Court. Respondent No.5 is stated to be not a necessary party.

3. The case of the defendants in support of the request made in the application for rejection of the plaint, in brief, is as follows:-

The plaintiffs filed the suit seeking the relief of mandatory injunction directing the defendants 5 & 6 to take appropriate action by demolishing the 3rd & 4th floors after conducting enquiry as per the directions dated 04.02.2016, of this High Court in W.P.No.3280 of 2016 against the plaint schedule property and for consequential relief of permanent injunction restraining defendants 1 to 4 from ever interfering with the plaintiffs joint rights in the stair case, terrace of the building and common amenities. The defendants 1 and 2 are the



GPA Holders. The 3rd defendant and 4th defendant constructed plaintiff schedule property, i.e., G+4 as builders, by name, "Sri Sai Sowdha" group house and the plaintiffs purchased a flat each in the 1st and 2nd floor in that group house. After purchase of the flats, the plaintiffs, in collusion with defendants 1, 2 and 4, with a view to secure wrongful gain, harassed the 3rd defendant by filing cases before District Consumer Forum-II, Vijayawada and also suit in O.S.Nos.410 of 2016 and 1153 of 2014 on the file of VI Additional Senior Civil Judge, Vijayawada. Later, the suit came to be dismissed on the basis of the memo filed by the plaintiffs. A writ petition in W.P.No.3280 of 2016 was filed before the High Court. The plaintiffs filed the instant suit with false and untenable grounds. The plaintiffs raised common reliefs in all the suits. Further, they have not taken any permission to file a fresh suit while not pressing the earlier suits filed by them.

3.1 According to the defendants, the plaint is liable for rejection on the following grounds:

(i) The pleadings in the plaint as well as cause of action are contrary to the orders made in W.P.No.3280 of 2016; (ii) The plaintiffs suppressed real/nature of the orders in W.P.No.3280 of 2016; (iii) The plaintiffs suppressed the contents of the order in W.P.No.3280 of 2016; (iv) The suit is premature; (v) The plaintiffs suppressed the cases filed by them against the defendants 1, 2 and 4 and the 3rd defendant; (vi) The reliefs sought for by the plaintiffs are hit by the principle of *res judicata*; and (vii) The plaintiffs did not pay proper court fee.

4. On the other hand, the case of the plaintiffs, in their counter, in brief, is that the petition is not maintainable either on facts or under



law. Though a group house was constructed by the defendants, and all the inmates are entitled for the amenities therein, the defendants are causing obstructions in using the amenities in spite of the orders of the Court. As a counter blast to the contempt case filed by the plaintiffs, the defendants filed the instant petition to reject the plaint. The plaintiffs filed the present suit only after not pressing the earlier suits filed by them by reserving their right to file fresh suit. As the defendants failed to comply with the order of the High Court in W.P.No.3280 of 2016, the present suit has been filed and the application to reject the plaint is liable to be dismissed.

5. At the time of hearing of the interlocutory application before the trial Court, no oral and documentary evidence was adduced. The trial Court, having regard to the averments in the plaint, dismissed the application of the defendants. Having preferred the present revision, the defendants reiterated the contentions which are referred to supra and which are urged in the affidavit filed in support of the application. Further, it is argued that a suit does not lie for enforcement of directions given in a writ petition. The plaintiffs reiterated their stand as urged in the plaint and in the counter affidavit filed in the interlocutory application.

6. To examine the question as to whether the plaint is liable to be rejected or not, it is necessary to examine the plaint averments independently, because, while considering an application under Order VII Rule 11 of the Code, the Court has to examine the averments in the plaint and the pleas taken in defence now by the defendants would be irrelevant.



7. For the purpose of better appreciation, relevant portion of Order VII Rule 11 of the Code is excerpted herein below:

“11. Rejection of plaint.— The plaint shall be rejected in the following cases:—(a) where it does not disclose a cause of action;

(b)

(c)

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e)

(f) ”

A perusal of the aforesaid provision would make it clear that a plaint is liable for rejection, if the suit is barred by any law or where it does not disclose a cause of action.

8. In **United Insurance Co. v. C. R. Ramanatham**,¹ this Court in paragraph 10 observed as under:

“Under Order VII Rule 11 (d) a plaint must be rejected only if the averments therein explicitly disclose that the suit was barred by the provisions of any law, but not otherwise. The Court had no power to throw out the suit by rejecting the plaint at the threshold stage by examining and interpreting the provisions of law on which the suit is found. Neither the express language of clause (d) of Rule 11 nor its intendment clothes the Court with such a power. The words “where the suit appears to be barred by any law” are qualified by “the statement in the plaint”. What is explicitly mentioned in the plaint, therefore, must alone be the basis for the exercise of power under Order VII Rule 11 (d), but not the conclusions

¹ 1989 (1) ALT 190



that may be interpretatively drawn on an examination of the statutory provisions alluded to in the plaint. Where there was no such explicit statement in the plaint the question whether there was any legal barricade to the suit must be tried as an issue at the appropriate stage and that by this procedure alone the interests of both the parties to the suit could be safeguarded.”

In a decision in **Bhau Ram vs. Janak Singh and others**², it is held as under:

“The law has been settled by this Court in various decisions that while considering an application under Order VII Rule 11 Code of Civil Procedure, the Court has to examine the averments in the plaint and the pleas taken by the Defendants in its written statements would be irrelevant. [vide C. Natrajan v. Ashim Bai and Anr. (2007) 14 SCC 183, Ram Prakash Gupta v. Rajiv Kumar Gupta and Ors. (2007) 10 SCC 59, Hardesh Ores (P) Ltd. v. Hede and Co. (2007) 5 SCC 614, Mayar (H.K.) Ltd. and Ors. v. Owners & Parties, Vessel M.V. Fortune Express and Ors. (2006) 3 SCC 100, Sopan Sukhdeo Sable and Ors. v. Assistant Charity Commissioner and Ors. (2004) 3 SCC 137, Saleem Bhai and Ors. v. State of Maharashtra and Ors. (2003) 1 SCC 557]. The above view has been once again reiterated in the recent decision of this Court in The Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman v. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee, JT 2012 (6) SC 149.”

9. Thus, it is settled law that petition under Order VII Rule 11 of the Code can be decided based only on the averments in the plaint and not by considering the defence taken or proposed to be taken in the written statement. Most of the contentions raised by the

² AIR 2012 SC 3023



revision petitioners are based on the defences. However, one main point to be considered is maintainability of the suit for enforcing the directions given in a writ petition.

10. A suit cannot be maintained for enforcing direction in a writ petition. A suit can be filed to obtain direction(s) in the form of decree. When the plaintiffs already secured directions in the order in the writ, a further proceeding in the form of a suit does not lie by clever drafting of the relief by extending the directions already obtained in the writ petition. The relief claimed in the present suit is a camouflage to bring the matter within contours of suit before a civil Court. The trial Court examined the petition in the light of the contentions of the petitioners in the nature of defence in the suit, but it has not examined the maintainability of the suit from the pleadings in the plaint itself. Thus, for the aforesaid reasons, the impugned order is liable to be set aside. Consequently, I.A.No.358 of 2017 is allowed.

11. Accordingly, this civil revision petition is allowed setting aside the order, dated 23.07.2018 in I.A.No.358 of 2017 in O.S.No.116 of 2017 and allowing the said application.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

B. S. BHANUMATHI, J

21.02.2022
RAR