
(2008) 02 AP CK 0069
In the Andhra Pradesh High Court
Case No : C.R.P. No. 3581 of 2005

K.L.V. Prasada Rao and Others

APPELLANT

Vs

K. Venkateswara Goud and Others

RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 7 Rule 11, Order 7 Rule 13
Constitution of India, 1950 — Article 227
Specific Relief Act, 1963 — Section 31
Transfer of Property Act, 1882 — Section 3

Citation : (2008) 2 ALD 669 : (2008) 2 ALT 455 : (2008) 1 APLJ 135

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : M.V. Durga Prasad and Mohd. Gulam Hussain, for the Appellant; C.M.R. Velu, for Respondent Nos. 1 to 8, K. Venugopal, for Respondent No. 10 and M.S. Ramachandra Rao, for Respondent Nos. 9 and 11 to 15, for the Respondent

Final Decision : Allowed

Judgement

G. Rohini, J.—The Revision Petitioners are the defendants 8 to 11 in O.S. No. 125 of 2004 on the file of the Court of the Senior Civil Judge, Nizamabad. This Civil Revision Petition is filed aggrieved by the dismissal of their application (I.A. No. 1287 of 2004) filed under Order 7 Rule 11 of C.P.C. for rejection of plaint.

2. The respondents 1 to 8 herein are the plaintiffs and the respondents 9 to 15 herein are the defendants 1 to 7 in the suit. For the sake of convenience, the parties shall hereinafter be referred as they are arrayed in the main suit.

3. O.S. No. 125 of 2004 has been filed by the plaintiffs for a declaration that the four Registered Sale Deeds bearing Nos. 3667, 3668, 3669 and 3670 of 2000, dated 24.6.2000 in favour of the defendants 8 to 11 are null and void and also for a perpetual injunction restraining the defendants 8 to 11 from encumbering the suit schedule property either by way of sale, gift or mortgage or doing any

construction over the said property. The suit schedule property i.e. the property alienated under the Registered Sale Deeds in question as described in Plaint A to D Schedules is situated in Sy. No. 5 of Kanteswar Village. The plaintiffs also filed I.A. Nos. 517 & 518 of 2004 under Order 39 Rules 1 & 2 of C.P.C. seeking temporary injunction restraining the defendants 8 to 11 from encumbering the suit property and from making any construction thereon and both the said applications were dismissed by a common order dated 14.6.2005. In the meanwhile, the defendants 8 to 11 (Revision petitioners) filed I.A. No. 1287 of 2004 under Order 7 Rule 11 of C.P.C. to reject the plaint. The said application was also dismissed by the Court below by a separate order on 14.6.2005. Aggrieved by the dismissal of I.A. No. 1287 of 2004, the present Civil Revision Petition has been filed by the defendants 8 to 11.

4. I have heard the learned Counsel for both the parties and perused the material on record.

5. The learned Counsel for the petitioners while submitting that the conclusion of the Court below that the petitioners failed to make out any of the grounds specified under Rule 11 of Order 7 of C.P.C. is erroneous, contended that on the face of it the plaint did not disclose any cause of action and therefore the same is liable to be rejected on that ground alone.

6. On the other hand, the learned Counsel for the respondents contended that since the rejection of plaint is a matter between the Court and the plaintiff, the defendants in the suit cannot interject in it and therefore the well considered order passed by the Court below in dismissing the application warrants no interference by this Court.

7. Before going into merits of the case, it is necessary to notice some of the essential facts as pleaded in the plaint by the plaintiffs as under:

The plaintiffs are the legal heirs of one K. Ganga Goud, who was the founder President of the 1st defendant society (hereinafter referred to as "Gouda Sangham"). He purchased Ac.1.35 guntas of land situated in Sy. No. 4 of Kanteswar Village, Nizamabad District from Rama Goud under a Sale Deed, dated 9.7.1960. Similarly, the 2nd defendant, which is an educational society, purchased Ac.2.31 guntas of land situated in Sy.Nos.5 and 6 of the same village from one Mendi Bakkanna. At the instance of the 2nd defendant society the above said lands were exchanged between the 2nd defendant society and the 1st defendant - Gouda Sangham -represented by Ganga Goud to suit their convenience. Consequently, the 2nd defendant society continued in possession of Ac.1.35 guntas of land situated in Sy. No. 4, whereas Ac.2.31 guntas situated in Sy.Nos.5 and 6 was given to the 1st defendant - Gouda Sangham which was completely looked after by late Ganga Goud. Though the agreement for exchange was oral, the same was acted upon and the name of K. Ganga Goud was entered in the pahani patrikas in possession column from the year 1961-62 onwards against S. Nos. 5 & 6. Late Ganga Goud was looking after the land

comprised in Sy. Nos. 5 & 6 to an extent of 4 acres and out of magnanimity an extent of Ac.2.35 guntas was left to the 1st defendant - Gouda Sangham. While so, the defendants 3 to 7 herein claiming title through Mendi Bakkanna, the vendor of the 2nd defendant society, filed a suit for declaration of title and recovery of possession in respect of Ac.2.31 guntas of land situated in Sy. Nos. 5 & 6 and the same was decreed ex parte. Thereafter, the 1st defendant - Gouda Sangham - represented by its founder president Ganga Goud, filed O.S. No. 120 of 1989 in the Court of the Senior Civil Judge, Nizamabad against the defendants 3 to 7 herein seeking declaration of title and perpetual injunction in respect of the same land. Though initially, the 2nd defendant society was impleaded as defendant No. 6 to the said suit, subsequently it was transposed as Plaintiff No. 2. After hearing both sides, O.S. No. 120 of 1989 was decreed on 31.8.2001 declaring the 2nd defendant society as the owner of the suit land. Challenging the said judgment and decree, the defendants 3 to 7 filed A.S. No. 2289 of 2001 before this Court. Pending the said Appeal, Ganga Goud died on 3.9.2002 and subsequently the appeal was dismissed as withdrawn in the month of September, 2004. Thereafter, the plaintiffs came to know that during the pendency of O.S. No. 120 of 1989, the defendants therein i.e. the defendants 3 to 7 herein transferred 3355 sq. yards of land (23 guntas) out of the suit land in favour of the defendants 8 to 11 (Revision petitioners) under 4 Registered Sale Deeds dated 24.6.2000. Hence, the present suit (O.S. No. 125 of 2004) seeking a declaration that the four Sale Deeds dated 24.6.2000 executed by the defendants 3 to 7 in favour of the defendants 8 to 11 (Revision Petitioners) are null and void contending inter alia that by virtue of the decree in O.S. No. 120 of 1989 declaring the 2nd defendant society as the owner of Ac.2.31 guntas of land situated in Sy. Nos. 5 & 6, the sales effected by the defendants 3 to 7 who have no right or title are void. While pleading that late K. Ganga Goud was the owner and possessor of the Ac.1.35 guntas of land situated in Sy. Nos. 5, it was claimed that on his death the plaintiffs had succeeded to the same and thus they were aggrieved by the execution of the sale deeds by the defendants 3 to 7 illegally in favour of the defendants 8 to 11. It was further pleaded that as per Pahani patrikas for the year 1961 to 1963 Sy.Nos.6 and 5, comprising an extent of Ac.2.05 guntas and Ac.1.35 guntas respectively the pattadar's name was shown as "Rama Goud" and Ganga Goud's name was shown as "Purchaser". Thus, while claiming that late K. Ganga Goud was the owner of Ac.1.35 guntas of land situated in Sy. No. 5, it was contended that the withdrawal of A.S. No. 2289 of 2001 by the defendants 3 to 7 was against the rights and interest accrued to the plaintiffs by inheritance after the death of Ganga Goud. It was also alleged that the defendants 3 to 7 were not the legal representatives of late Mendi Bakkanna and they had no locus standi to represent the property in Sy. Nos. 5 or 6. It was further alleged that the transactions covered by the sale deeds in question were sham and contrary to the provisions of the Contract Act and as such no rights were acquired by the defendants 8 to 11.

8. The defendants 8 to 11 (Revision petitioners) who are the purchasers of the

disputed land filed I.A. No. 1287 of 2004 under Order 7 Rule 11 of C.P.C. to reject the plaint contending inter alia that there was no cause of action for filing the suit since the plaintiffs (respondents 1 to 8 herein) themselves admitted in the plaint that the 2nd defendant society was the owner of the suit properties. It was also contended that the suit which was filed in the year 2004 questioning the sale deeds registered on 24.6.2000 was barred by limitation. It was further contended that the suit was barred by principles of res judicata since the matter was directly and substantially in issue in O.S. No. 120 of 1989 and was finally decided.

9. The said application was opposed by the plaintiffs contending that since all the said questions require consideration and decision in the main suit, the application under Order 7 Rule 11 of C.P.C. cannot be maintained to reject the plaint at threshold.

10. The Court below, after hearing both the parties, dismissed I.A. No. 1287 of 2004 by order dated 14.6.2005 holding that there are no grounds to reject the plaint under Order 7 Rule 11 of C.P.C. Aggrieved by the said order, the present revision petition is filed under Article 227 of the Constitution of India by the defendants 8 to 11.

11. For proper appreciation of the controversy involved, it would be appropriate to refer to Rule 11 of Order 7 of C.P.C. which provides for rejection of plaint in certain circumstances.

R. 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 supply the requisite stamp-paper within to be fixed by the Court, fails to do so:

(c) Where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within the 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:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers 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-papers, 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.

12. A plain reading of the above provision shows that the plaint shall be rejected in the circumstances mentioned in clauses (a) to (d). It is also relevant to note

that Rule 11 does not provide for dismissal of the suit but only empowers the Court to reject the plaint and filing of fresh plaint in respect of the same cause of action is permissible under Rule 13 of Order 7 of C.P.C.

13. The revision petitioners/defendants 8 to 11 contended that since the plaintiffs had no subsisting right or interest in respect of the suit schedule property and particularly since they were not parties either to the earlier suit or to the registered sale deeds sought to be cancelled, there was no cause of action at all in the suit.

14. The law is well settled that a cause of action is a bundle of facts, which are required to be pleaded and proved for the purpose of obtaining the relief claimed in the suit. Whether a plaint discloses a cause of action or not is essentially a question of fact which has to be made out from reading the plaint itself. It is also a settled principle of law that the relevant facts which need to be looked into for deciding an application under Order 7 Rule 11 of CPC are the averments in the plaint and from such averments, it has to be decided whether a real cause of action has been set out in the plaint or something purely illusory has been stated vide *Saleem Bhai and Others Vs. State of Maharashtra and Others*, and *I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and Others*, . It was clarified in *Sopan Sukhdeo Sable and Others Vs. Assistant Charity Commissioner and Others*, that what is required in law for the purpose of Order 7 Rule 11 of CPC is not the piecemeal reading of the plaint, but it shall be read in its entirety. In *T. Arivandandam Vs. T.V. Satyapal and Another*, it was emphasized that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, the Court should exercise its power under Order 7 Rule 11 CPC and reject the plaint. In *Liverpool and London S.P. and I Asson. Ltd. Vs. M.V. Sea Success I and Another*, the same principle has been reiterated while observing asunder:

The idea underlying Order 7 Rule 11(a) is that when no cause of action is disclosed, the courts will not unnecessarily protract the hearing of a suit. Having regard to the changes in the legislative policy as adumbrated by the amendments carried out in the Code of Civil Procedure, the courts would interpret the provisions in such a manner so as to save expenses, achieve expedition and avoid the court's resources being used up on cases which will serve no useful purpose. A litigation which in the opinion of the court is doomed to fail would not further be allowed to be used as a device to harass a litigant.

15. Having regard to the above legal position, the question that arises for consideration is whether the averments made in the plaint in O.S. No. 125 of 2004, even if taken to be correct in their entirety, disclose a cause of action so as to grant a decree as prayed for in favour of the plaintiffs.

16. The learned Counsel for the respondents while citing the decisions in *Rajasthan High Court Advocates' Association v. Union of India* (2001) 2 SCC 294 : 2001 (3) ALT 23.3 (DNSC), *Navinchandra N. Majithia Vs. State of*

Maharashtra and Others, , Hari Shankar Jain Vs. Sonia Gandhi, and T.N. Khambati and Others Vs. Government of A.P. and Others, , vehemently opposed the contention of the petitioners that there was no cause of action for the suit.

17. There can be no dispute about the ratio laid down in the above decisions. The expression cause of action means every fact, which it would be necessary for the plaintiff to prove if traversed in order to support his right to the judgment of the Court. However, so far as Order 7 Rule 11(a) of C.P.C. is concerned, as already noticed above, the test is whether the plaint discloses such cause of action on a meaningful reading of the averments therein.

18. A perusal of the plaint schedule in O.S. No. 125 of 2004 shows that the properties covered by all the sale deeds in question are situated in Sy. No. 5 of Kanteswar Village. In the plaint itself it was admitted that the land in Sy. Nos. 5 and 6 was originally owned by the second defendant-society and the 1st defendant - Gouda Sangham got it from the second defendant in exchange of the land situated in Sy. No. 4 and that late Ganga Goud was looking after the land in Sy. Nos. 5 and 6 on behalf of the first defendant-Gouda Sangam. It was admitted by them in the plaint that the earlier suit filed by the first defendant-Gouda Sangam being O.S. No. 120 of 1989 was decreed declaring the second defendant society as the owner of the land situated in Sy. Nos. 5 and 6 of Kanteswar Village to an extent of Ac.2.31 guntas. According to them the appeal preferred by the first defendant-Gouda Sangam against the decree in O.S. No. 120 of 1989 was dismissed as withdrawn. Though it was alleged in the plaint that the Appeal against decree in O.S. No. 120 of 1989 was dismissed as withdrawn by the defendants 3 to 7 with active connivance of defendants 8 to 11, it is found that as a matter of fact the Appeal A.S. No. 2289 of 2001 was disposed of in terms of the compromise memo filed by both the parties. The record in A.S. No. 2289 of 2001 also shows that though subsequently the plaintiffs filed an application to reopen the Appeal, the same was dismissed by this Court. Thus, as on today, the decree in O.S. No. 120 of 1989 declaring the 2nd defendant society as owner of the property in Sy. Nos. 5 & 6 has become final.

19. Thus, it is clear that late Ganga Goud never had any title in respect of the suit land but he was only looking after the suit land on behalf of the first defendant-Gouda Sangam. Absolutely there is no averment in the plaint to show that the plaintiffs have anything to do with the first defendant-Gouda Sangam, but the entire claim in the suit is only as the legal representatives of late Ganga Goud. In the absence of any plea much less material to show that late Ganga Goud had any subsisting right of ownership in the suit land at any point of time, the plaintiffs who claim through late Ganga Goud cannot have any grievance about the sale of the suit land. It is also relevant to note that the plaintiffs are not parties to the registered sale deeds, which are sought to be declared as void. The suit is not for declaration of title, but it is only for declaration of the sale deeds, to which they were not parties, as void.

20. As a matter of fact, the Court below, while dismissing I.A. Nos. 517 and 518

of 2004 filed by the plaintiffs for temporary injunction, recorded a finding that the plaintiffs were never in possession of the suit properties and they also failed to show that late Ganga Goud was in possession of the suit properties during his life time. The Court below also took note of the fact that late Ganga Goud deposed in O.S. No. 120 of 1989 on 27-07-2000 as D.W. 1 and in his cross-examination he stated that he came to know that the suit properties were sold away by the third defendant. The facts borne out of the record that O.S. No. 120 of 1989 was filed by the first defendant Gouda Sangam and late Ganga Goud was only representing the first defendant-society and that in the said suit late Ganga Goud never claimed that he was the owner and possessor of Ac.2.35 guntas and Ac.0-19 guntas of land situated in Sy. Nos. 5 and 6 were also taken note of by the Court below while dismissing the applications for temporary injunction.

21. However, surprisingly the Court below while considering the application under Order 7 Rule 11 of C.P.C. had proceeded on an erroneous assumption that in the plaint it was pleaded that after exchange of lands between the first defendant-Gouda Sangam and the second defendant society, Ganga Goud became the owner and possessor of Ac.2.35 guntas and Ac.0.19 guntas in Sy. Nos. 5 and 6 and that Ganga Goud retained for himself Ac.0-19 guntas in Sy. No. 5 and after his death the plaintiffs succeeded to the property left by Ganga Goud.

22. As a matter of fact, there was no such plea in the plaint. On the other hand, the plaint averments read with plaint documents, particularly the certified copy of the deposition of Ganga Goud in O.S. No. 120 of 1989 (Ex. A-26) show that late Ganga Goud was neither holding title nor possession in respect of any portion of land in Sy. No. 5. No other material is placed before this Court by the respondents to substantiate the averment that Ganga Goud retained for himself 19 guntas of land in Sy. No. 5.

23. In the circumstances, I find force in the submission of the learned Counsel for the petitioners that order under revision is not based on facts set out in the plaint. Consequently, the observation of the Court below that if the allegations in the plaint are proved, the plaintiffs may be entitled to the relief sought is erroneous and factually incorrect.

24. That apart, admittedly, the plaintiffs are not parties to the documents in question. u/s 31 of Specific Relief Act, 1963, a suit for declaration of a written instrument as void can be filed only by a person against whom the instrument is void or voidable. In the case on hand, since the plaint does not disclose as to how the sale deeds in question are void or voidable against the plaintiffs who have no subsisting right or interest in the suit property and who are not parties to the documents, even if the plaint averments are taken to be true in their entirety, it cannot be said that the plaintiffs have made out any right to sue.

25. For the aforesaid reasons, it cannot be said that there is any cause of action for the plaintiffs to file and maintain the suit for a declaration that the sale deeds in favour of the defendants 8 to 11 are null and void. Since a clear case is made

out to show that clause (a) of Rule 11 of Order 7 of CPC is attracted I am of the opinion that on that ground alone the plaint is liable to be rejected.

26. The learned Counsel for the petitioners further contended that the suit is also barred by limitation and therefore, the plaint is liable to be rejected under clause (d) of Rule 11 of Order 7 CPC. The learned Counsel while pointing out that the deposition of late Ganga Goud, which was annexed to the plaint as Ex. A-26 dated 27-07-2000, shows that as on that date, late Ganga Goud had knowledge about the sale deeds in question, contended that the suit filed in the year 2004 is barred by limitation.

27. Admittedly, the sale deeds were registered on 24-06-2000 under the provisions of the Registration Act, 1908. As per Section 3 of the Transfer of Property Act, 1882, such registration itself is a deemed notice of such instrument and consequently the suit filed on 27-09-2004 was clearly barred by limitation. It is true that in the plaint it was pleaded by the plaintiffs that they came to know about the execution of the sale deeds only on 04-09-2004. However, the said plea cannot be read in isolation ignoring the other averments as well as the documents annexed to the plaint which disclosed that late Ganga Goud himself had the knowledge of the transaction in the year 2000 itself but did not choose to challenge the same.

28. For the aforesaid reasons, the plaint in O.S. No. 125 of 2004 is liable to be rejected in exercise of the jurisdiction under Order 7 Rule 11 of C.P.C. not only on the ground that it does not disclose a cause of action but also on the ground that the suit is barred by limitation. The order under Revision under which the Court below declined to exercise the said jurisdiction conferred under law is vitiated by a patent error of jurisdiction warranting interference by this Court.

29. Accordingly, the order under Revision is hereby set aside and I.A. No. 1287 of 2004 shall stand allowed.

The Civil Revision Petition is accordingly allowed. No costs.