

(2003) 05 KAR CK 0015
In the Karnataka High Court
Case No : M.S.A. No. 413 of 1998

Smt. Mariamma and Others

APPELLANT

Vs

Sri N.V. Srinivasa Murthy and Others

RESPONDENT

Date of Decision : 26-05-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 151

Citation : (2003) ILR (Kar) 3134 : (2004) 3 KarLJ 417

Hon'ble Judges : A.V. Srinivasa Reddy, J

Bench : Single Bench

Advocate : R.B. Venkataramana, for the Appellant; T. Puttaswamy, R-5 and 6, T.N. Vishwanath, for R-1 to 4 and M. Rama Mohan, for R-9 and 10, for the Respondent

Final Decision : Allowed

Judgement

Srinivasa Reddy, J.

1.The appellants- defendants have presented this appeal praying for setting aside the judgment and decree passed by the Second Addl. District Judge, Bangalore, Rural District, Bangalore in R.A.No. 15/96 dated 28.2.1998.

2. The plaintiffs (respondents 1 to 3) filed the suit for a declaration that they are the owners of the suit lands and for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit lands by them. Plaintiffs filed the suit on the averments that the suit properties are their ancestral properties and their father late N.Venkatachalaiah in order to clear the family debts and for purposes of improving the land borrowed a sum of Rs. 2000/- from one Dodda Appaiah @ Muniswamappa and executed a registered sale deed dated 5.5.1953 in his favour as security. There was an agreement to repay the above sum with interest thereon at 6% per annum and to return the above registered sale deed after discharge of the entire amount. Subsequent to the execution of the sale deed their father continued in

possession of the suit lands and after his death the plaintiffs are in possession of the suit lands and are personally cultivating the lands. They were also paying the kadayam in respect of the schedule lands. On 30.7.1963 Munishamappa executed a receipt dated 30.7.1963 in favour of first plaintiff and his elder brother Venkatadasappa for all the amounts received by him in respect of the loan transaction and promised to execute the registered sale deed in favour of the plaintiff in respect of the suit lands. In the meanwhile as Munishamappa died. The entire balance of the amount due to Munishamappa was paid through Venkatappa Gowda and a receipt obtained in that behalf from 1st defendant. After the discharge of the entire sum the original sale deed dated 5.5.1953 executed by plaintiff's father Venkatachalaiah in favour of Munishamappa was returned to the first plaintiffs. Neither Munishamappa nor defendants 1 to 8 who are his legal heirs exercised the right of ownership of the schedule properties at any time. The cause of action for the suit arose on and from 24.8.1994 on which date the Asst. Commissioner, Doddaballapur Sub-Dvn. Passed order in R.A.78/89-90 and in the first week of July, 1995 when defendants attempted to interfere with plaintiff's possession and enjoyment of the suit lands.

3. On notice of the suit being served on the defendants, the defendants put in their appearance and filed I.As. 3 to 6 under Order 7, Rule 11 read with Section 151 C.P.C. praying for rejection of the suit as not maintainable. The Trial Court allowed the I.As. filed by the defendants and rejected the plaint under Order 7, Rule 11 C.P.C. on the ground that there was no cause of action and the cause of action as mentioned in the plaint is an illusory one created for the purpose of filing the suit.

4. Aggrieved by the rejection of the plaint, the plaintiffs went up in appeal in R.A. 1596. The Court-below on a close examination of the rival contentions of the parties allowed the appeal, set aside the orders of the Trial Court on I.As. 3 to 6 and remitted the matter to the Trial Court for fresh disposal on merits. The order of the Court below is challenged in this appeal by the defendants on the ground that the ambit and scope of Order 7, Rule 11 has not been properly appreciated by the Court-below while allowing the appeal filed by the plaintiffs.

5. I have heard the learned Counsel on both sides.

6. In the light of the plaint averments and the arguments advanced by the learned Counsel appearing for the parties, the question that arises for my consideration in the present appeal is; Whether the bundle of facts urged by the plaintiffs in the plaint constitute or gives rise to a cause of action?

7. Under Order 7 Rule 11 C.P.C. the Court can reject the plaint where the plaint does not disclose a cause of action. A duty is cast on the Court to reject the plaint if it finds that the facts pleaded in the plaint do not disclose the cause of action. Though the defendants may indicate to the Court by an application that the plaint is liable to be rejected under Order 7, Rule 11 C.P.C. it is primarily the duty of the Court to decide the matter and for that reason it is the plaint alone

which is relevant for a decision under Order 7, Rule 11 C.P.C. It is true that for purpose of examining whether or not the plaint averments give rise to a cause of action, the averments contained therein should be taken as correct. The Trial Court on a close reading of the material facts urged in the plaint has come to the conclusion that the cause of action pleaded in the plaint was a mere illusory one and the real cause of action arose on 5.5.1953 when the sale deed was executed or the latest in the year 1961 when Munishamappa took hostile attitude towards plaintiff's father. The Trial Court has placed reliance on the averments in this regard in para 6 of the plaint, which reads:

"In the year 1961 Alappanahalli Munishamappa took hostile attitude against plaintiff's father. At that juncture the plaintiff's father insisted for a written document from Alappanahalli Munishamappa. Venkatappagouda promised to get the registered sale deed executed by Alappanahalli Munishamappa provided the entire arrears is paid early. Alappanahalli Munishamappa alias Dodda Appaiah executed a receipt dated 30.7.1963 in favour of the 1st plaintiff and his elder brother N. Venkatadasappa for all the amounts received by him in respect of the loan transaction and promised to execute the registered sale deed in favour of plaintiffs in respect of the schedule lands."

The suit filed by the plaintiff is one for declaration that they are the owners of the suit lands and for permanent injunction. The order of the Tahsildar effecting katha in the name of defendants or the orders of the Asst. Commissioner dated 24.8.1994 confirming the orders of the Tahsildar cannot serve as the cause of action for a suit filed for declaration of title. The entries in the revenue records in respect of a land can neither bestow title on anybody nor will they have the effect of taking away the right of ownership if a person is really the owner of the land. As the suit primarily is one claiming ownership of the suit lands, the plaintiffs ought to have sought for the cancellation of the sale deed dated 5.5.1953 by which, even according to the plaintiffs, the defendants claim ownership over the suit lands. It is also the case of the plaintiffs that the defendants are interfering with their possession and enjoyment of the suit lands. In this regard they have also filed O.S. 357/90 for bare injunction. An interim order granted in the said suit was later vacated. An appeal preferred by them in M.A. 95/90 against the order vacating the interim order is also dismissed on merits. In this fact situation in order to seek the relief of declaration of their ownership over the suit lands the plaintiffs ought to have pleaded the material facts necessary to establish their ownership over the lands. They claim that the suit lands are their ancestral property. They also aver in the plaint that their father executed a sale deed in respect of the suit lands as security for the amount borrowed from Alappanahalli Munishamappa. When it is urged by the plaintiffs that the sale deed executed by their father was only a nominal one and was not intended to be acted upon they cannot be declared as owners unless it was pleaded by them that the nominal sale deed executed by their father has to be cancelled. Such a pleading is a material fact necessary for constituting a cause of action against the defendants who rely on the very sale deed for

claiming ownership over the suit lands. For obvious reasons the plaint in the present case does not contain the averments to that effect. The mere averments that the defendants are interfering with their peaceful possession of the suit lands and that the Asst. Commissioner passed an order in R.A. 78/89-90 for entering the name of the defendants in the revenue records do not constitute the material facts necessary for constituting a cause of action for the relief of declaration of ownership of the plaintiff over the suit lands.

8. The Court-below has failed to examine the case from the point of view, whether or not there exist in the plaint averments essential for granting the ultimate relief claimed in the suit. No doubt the averments contained in the plaint may hold good for an injunction suit but not for a suit claiming declaration of ownership. The Court below has proceeded on the premise that merely claiming in the plaint that the sale transaction by the plaintiff's father is only nominal one would serve as a material fact for granting the relief overlooking the fact that granting such relief would entail on the part of the Court the cancellation of the sale deed so executed. And in order to arrive at the conclusion that the sale deed in fact was a nominal one and that therefore the plaintiffs continued to be the owners of the suit lands despite execution of the sale deed by their father, it calls for a specific pleading in clear terms that the sale deed executed by their father has to be cancelled. Unless the plaint contained a prayer for cancellation of the sale deed, it cannot be said by any stretch of imagination that the plaint did contain the material fact necessary for constituting a cause of action necessary to get the ultimate relief pleaded by the plaintiffs. The plaintiffs have cleverly avoided making such a plea because any plea in that regard would render the suit hopelessly barred by limitation. The question as to when the Court should exercise its power under Order VII, Rule 11 C.P.C. had come up for consideration in *T. ARIVANDANDAM vs T.V. SATYAPAL*¹. Pronouncing on what the plaint should disclose, the Apex Court observed:

"The Trial Court must remember that if on a meaningful - no formal - reading of the plaint it is manifestly vexatious and 1. (1977) 4 SCC meritless in the sense of not disclosing a clear right to sue, it should exercise its power under Order VII, Rule 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a clause of action, the Court must nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist judge is the answer to irresponsible law suits".

(Under lining is mine)

The averment that the sale deed is a nominal one, without it being accompanied by a plea for its cancellation, creates an illusion of existence of a cause of action when actually it does not. In the absence of such a plea it has to be held that the plaint does not disclose the material fact which has to be proved, if traversed in order to support the plaintiffs' right to the judgment and decree as sought by them. The material fact is the aid with the help of which the plaintiff could establish the ground on which he could support his right to the relief against the

defendants. In order to entitle themselves to the relief of declaration of ownership over the suit lands, the plaintiff ought to have pleaded the fact of the nominal nature of the sale deed as giving rise to the cause of action and asking the Court to cancel the sale deed. Though the fact of nominal nature of the sale deed is pleaded, the plaintiffs have neither sought for the cancellation of it nor have they disclosed it as the fact giving rise to the cause of action for the suit. In MOHAMMAD HAFIZ vs MUHAMMAD ZAKARIYA AIR 1922 P.C. 23 the Privy Council held:

"The cause of action is the cause which gives occasion for and forms the foundation of the suit..."

The plea that the sale deed is nominal and therefore requires to be cancelled ought to have been pleaded as the foundation of the suit for on such a plea alone, in the facts and circumstances of the case, the plaintiff could have asked the Court to come to a conclusion in his favour. This material fact is not pleaded as the foundation for the suit but the change of pahani entries in the revenue records and interference by the defendants is what is pleaded as the foundation providing the cause of action for the suit which it certainly cannot. On a close and meaningful scrutiny of the plaint, I find that it does not disclose a cause of action.

9. The Trial Court has considered I.A.s 3 to 6 filed by the defendants together. I.A.3 is filed for rejection of the plaint on the ground of non-payment of proper Court -fee. I.As 4 and 5 have been filed for rejection of the plaint on the ground of lack of pecuniary jurisdiction and want of cause of action. In I.A.No. 6 filed by defendant No. 4 is also filed for rejection of the plaint on the plea of nondisclosure of the causes of action. The Trial Court came to the conclusion that the facts pleaded in the plaint do not give rise to a cause of action and it is on this basis it disposed of these I.A.s. But in the operative portion of the order, the Court-below has rejected the suit as barred by time. This is a technical flaw in the order of the Court. The question of limitation is a mixed question of fact and law and not a pure question of law and so it shall have to be decided by settling issues after completion of the pleadings and treating the issue regarding limitation as a preliminary issue after giving opportunity to the parties to the suit to lead whatever evidence they choose to adduce. The expression used by the Trial Court in the operative portion of the order, therefore, is flawed but that is not material for our purpose because the Trial Court has in clear terms found that the plaint is lacking in material pleadings and does not give rise to a cause of action. It is on this ground and on this ground alone the Trial Court has rejected the suit and not on the ground that the suit is barred by limitation. The learned Counsel for respondent relied on Smt. P. Vasanthi Vs. Smt. Vimala Martin and Another, , wherein this Court has held that the point of limitation is a mixed question of law and fact and could not be disposed of without evidence being adduced on the point. There can be no dispute about this proposition but the only ground on which the Trial Court rejected the suit was on the ground of want

of material particulars giving rise a cause of action and not on the ground that the suit is barred by limitation though it used such expression unwittingly in the operative portion of the order. The Court ought to have merely rejected the plaint on the ground of nondisclosure of the material facts in the plaint giving rise to a cause of action. The Trial Court ought to have either rejected I.A.No. 3 or should have ordered it to be filed. The Trial Court has committed an error in allowing I.A. No. 3 also when the ground of want of cause of action was not urged at all in the said I.A.

10. Learned Counsel for the respondent cited several decisions on the point of limitation. The decision in *British Airways Vs. Art Works Export Ltd. and Another*, relates to a dismissal of the suit as bared by limitation. In *ARJAN SINGH vs UNION OF INDIA AIR 1987 Delhi 165*, a learned Single Judge of the Delhi High Court held that where the real question of limitation is connected with the merits of the claim in the suit, then it has to be tried along with the other issues. The decision in *Khaja Quthubullah Vs. Government of Andhra Pradesh and others*, , also decided the issue whether the issue of limitation can be decided as a preliminary issue. The decisions in *MOHANLAL SUKHADIA UNIVERSITY, UDAIPUR vs MISS.PRIYA SOLOMON* also is on the point of limitation. The decision in *Lady Dinbai Dinshaw Petit and Others Vs. The Dominion of India and Another*, , is on the question whether a further notice u/s 80 is necessary to the Government where the plaint is amended bringing in some new grounds. The plaint has been rejected principally on the ground that it does not disclose a cause of action. These decisions which are cited by learned Counsel for the respondent are on the point of limitation which is not in issue at all. The dismissal of the suit by the Trial Court on the ground that it is barred by limitation is a flaw committed by it when the Trial Court actually rejected the plaint for the reason that it does not disclose a cause of action. In *State of Karnataka Vs. Coimbatore Premier Constructions*, , it is held that where the plaintiff has paid deficit Court - fee, it is mandatory for the Court to fix time within which the plaintiff is required to make good the deficit. The Trial Court has not dealt with the case from the point view of the sufficient or otherwise of the Court-fee paid on the plaint. This decision also is irrelevant for our purpose.

11. In *Sivananda Roy Vs. Janaki Ballav Pattnaik and Others*, , it has been held by a learned Single Judge of the Orissa High Court that all facts constituting the cause of action must find place in the plaint. The relevant observations in this regard read:

"Reading Order 6, Rule 2 and Order 7, Rule 11 together it is clear that the words 'material facts' occurring in Order 6, Rule 2 with reference to a plaintiff means the facts necessary to form a complete cause of action. The language of Order 7, Rule 11 makes it imperative that the facts constituting the cause of action must find place in the plaint. Thus all the facts and not the evidence which are necessary to be proved for claiming relief must find place in the plaint. A plaint which does not conform to the aforesaid requirement does not disclose a cause

of action within the meaning of Order 7, Rule 11(a)".

In the present case also the plaint does not disclose one vital fact essential to constitute the cause of action and, therefore, it does not conform to the requirement of Order 7, Rule 11 C.P.C. In K. PREMANANDA vs SYNDICATE BANK AIR 1999 KAR 231 , this Court in a suit for recovery of money held that the plea of the plaintiffs that the defendant had acknowledged his liability to pay debt and thus the suit was not barred by limitation was not considered and, therefore, the order decreeing the suit was per se illegal. The decision is of no relevance to the question in issue in this case. On an over all consideration of the rival contentions between the parties and the case laws on the point, I am of the considered view that the plaint averments do not disclose a cause of action.

12. In the result, for the reasons stated above, the appeal is allowed and the order passed by the Court-below is set aside. The order passed by the Trial Court on I.A.No. 3 is also set aside and I.A.No.3 is ordered to be filed. The order passed by the Trial Court on I.A.s 4 to 6 rejecting the suit as time barred is modified. I.A.s 4 to 6 are allowed, rejecting the plaint under Order 7 Rule 11 C.P.C. for want of material facts giving rise to a cause of action.

13. It is submitted that the appellants had filed R.S.A. 290/98 against the impugned order of the Court-below. Subsequently, since the appellants have challenged the impugned order which is an order of remand, this Court has permitted the conversion of R.S.A. into M.S.A. The Court-fee payable in respect of M.S.A. is fixed Court-fee of Rs. 100/-. In the said view of the matter, the office is directed to refund the balance of the Court-fee paid on the appeal.