

IN THE HIGH COURT FOR THE STATE OF TELANGANA, HYDERABAD

* * *

CCCA.No.62 of 2024

Between:

Bajranglal Agarwal

Petitioner/Appellant

VERSUS

Smt.Susheela Agarwal and others

Respondents

ORDER PRONOUNCED ON: 20.08.2024

**THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HON'BLE JUSTICE M.G.PRIYADARSINI**

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether Her Ladyship wishes to
see the fair copy of the Judgment? : No

MOUSHUMI BHATTACHARYA, J

*** THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA**
AND
THE HON'BLE JUSTICE M.G.PRIYADARSINI

+ CCCA.No.62 of 2024

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Respondents

! Counsel for appellants : Mr.Vedula Srinivas, learned Senior Counsel.

^ Counsel for respondent No.1 : Mr.Vedula Venkatramana, learned Senior Counsel.

Counsel for respondent No.2 : Ms.Manjhari S. Ganu.

Counsel for respondent No.3 : Mr.Dishit Bhattacharjee, learned Senior Counsel.

< GIST :

> HEAD NOTE :

? Cases referred :

- 1 (2004) 9 SCC 512
- 2 (2004) 3 SCC 137
- 3 (1999) 3 SCC 267
- 4 (2005) 10 SCC 51
- 5 (1997) 4 SCC 467
- 6 (1998) 2 SCC 70
- 7 (2020) 7 SCC 366
- 8 202 SCC OnLine 521

THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HON'BLE JUSTICE M.G.PRIYADARSINI

CCCA.No.62 of 2024

JUDGMENT: *(Per Hon'ble Justice Moushumi Bhattacharya)*

The Appeal arises out of an order dated 31.01.2024 passed by the XI Additional Chief Judge, City Civil Court, at Hyderabad in an application made by the respondents/defendants under Order VII Rule 11 of The Code of Civil Procedure, 1908 ('CPC') for rejection of the plaint filed in the appellant's Suit.

2. The appellant/plaintiff filed a Suit before the Trial Court for partition of the suit schedule property by allotting 1/3rd share to the appellant and for declaration of the Gift Settlement Deed executed by the respondent No.1/defendant No.1 in favour of the respondent No.2/defendant No.2 on 09.12.2022 as null and void. By the impugned order, the defendants' (respondents herein) application under Order VII Rule 11 of CPC was allowed and the appellant's plaint was rejected.

3. A brief explanation of the relevant facts is required to be stated:

4. The appellant/plaintiff is the youngest son, respondent No.2 is the eldest son and respondent No.3 is the 2nd son of the respondent No.1.

5. The appellant filed the Suit - O.S.No.124 of 2023 – against the respondents i.e., the mother and the 2 remaining brothers, for partition

of the suit schedule property and allotment of 1/3rd share to the appellant. The appellant also sought for cancellation of a Gift Settlement Deed executed by respondent No.1/mother in favour of respondent No.2/eldest son.

6. From section IV of the plaint – “Cause of Action” - the following facts would appear:

6.1. The respondent No.1/mother executed a Will Deed on 16.08.2022 and cancelled the said Will Deed on 09.12.2022. The respondent No.1 executed a registered Gift Settlement Deed on the same date i.e., on 09.12.2022 in favour of the respondent No.2. In December 2022, the appellant requested the respondents to partition the suit schedule property which was refused by the respondents in December 2022. The appellant filed the Suit on 10.03.2023 for the relief as stated above.

7. The respondents filed I.A.No.1881 of 2023 under Order VII Rule 11 of the CPC for rejection of plaint. The Trial Court allowed the respondents’ application for rejection of plaint, *inter alia*, on the ground of the appellant having failed to present the relevant facts with regard to the suit schedule property and that the appellant also admitted the right of the respondent No.1/mother as the owner of the suit schedule property. The Trial Court also found that the plaint lacked a valid cause of action and is barred by law.

8. Learned Senior Counsel appearing for the appellant submits that the appellant's father purchased the suit schedule property in the name of respondent No.1 (plaintiff's mother) and she executed a registered Will Deed bequeathing the suit schedule property in the name of all the sons including the appellant. Counsel submits that the respondent No.2/elder son prevailed upon the respondent No.1 for obtaining the entire suit schedule property which led to cancellation of the Will Deed on 09.12.2022 and execution of the Gift Settlement Deed on the same day by the respondent No.1 in favour of the respondent No.2. Counsel also urges that the Suit required a full-fledged trial particularly since the respondent No.1/mother is only an ostensible owner and not the real owner of the suit schedule property.

9. Learned Senior Counsel appearing for the respondent No.1/mother submits that respondent No.1 purchased the suit schedule property under a registered Sale Deed dated 05.11.1988 and that she is the absolute owner of the said property, namely a house which forms the sole property in the plaint schedule. Counsel submits that none of the sons have any legal right to seek partition or allotment of the house property or 1/3rd share thereof since the respondent No.1 is absolute owner of the suit schedule property.

10. Learned Senior Counsel appearing for the respondent No.2/elder son relies on the settled legal position that only the statements made in the plaint need to be looked at for ascertaining a valid cause of action. Counsel reiterates that the respondent No.1/mother had consistently asserted her absolute and exclusive ownership since 05.11.1988 by virtue of a Sale Deed executed on that date. Counsel further submits that the appellant cannot now turn around to question the same in December, 2022 having accepted the Will Deed dated 16.08.2022 which specifically refers to the absolute ownership of the respondent No.1.

11. Learned Senior Counsel appearing for the respondent No.3 (second son of the respondent No.1) reiterates the stand taken on behalf of the respondent No.1/mother and the respondent No.2/elder brother and relies on decisions to submit that the appellant failed to show any basis for the suit schedule property being a HUF property or any justification for the reliefs claimed in the Suit.

The statements made in the Plaint

12. This is necessary for the purpose of an action under Order VII Rule 11 of the CPC for rejection of plaint. We only refer to the statements made in the plaint which are relevant to the issue of cause of action.

- (i) Section III of the plaint contains a statement on the brief facts of the case. Paragraph No.1 refers to the plaintiff (appellant herein) and the respondent Nos.2 and 3, being the sons of the Late Purushottam Das Agarwal and respondent No.1. The plaintiff further states that Late Purushottam Das Agarwal purchased the house property in the name of his wife/respondent No.1 by way of a registered Sale Deed dated 05.11.1988 (the suit schedule property).
- (ii) Paragraph No.2 states that Late Purushottam Das Agarwal died on 19.09.1992 and the respondent No.1 managed the Joint Family Properties from that date onwards. The plaintiff and the defendants are in joint possession of the suit schedule property.
- (iii) Paragraph No.4 states that the defendant/respondent No.1 managed the family properties in her name and intended that the suit schedule property should devolve among her sons. The respondent No.1 bequeathed the entire suit schedule property by way of Will among her 3 sons in equal measures and all the 3 sons got 1/3rd share each in the said property.
- (iv) Paragraph No.6 states that none of the defendants had raised any objection with regard to the division of the shares in the suit schedule property but that the defendant No.2 (the respondent No.2 herein - elder son) changed the attitude of the respondent

No.1/mother by making false claims. The respondent No.2 and his family is “economically backward” compared to the other sons and hatched a plan to get the entire suit schedule property in his name. The respondent No.2 succeeded in cancellation of the registered Will Deed dated 16.08.2022 with the help of other family members, without the consent of the plaintiff.

- (v) Paragraph No.7 states that the respondent No.2 also succeeded in getting the registered Gift Settlement Deed on the same day i.e., 09.12.2022.
- (vi) Paragraph No.8 states that in December 2022, the plaintiff requested the defendants to partition the suit schedule property but the defendants did not accept the said proposal and refused to give the plaintiff a share in the Joint Family Property.
- (vii) Paragraph No.9 states that the suit schedule property is a Joint Family Property and that the plaintiff is one of the coparcener in the Joint Family.
- (viii) Paragraph No.11 reiterates the statements made in paragraph No.9.
- (ix) Paragraph No.12 states that the defendant No.1 did not have any right to alienate the suit schedule property and that the

defendant No.1 did not have any exclusive rights over the suit schedule property.

(x) Paragraph No.15 states that the defendant No.2 has filed a Suit in the City Civil Court, Hyderabad against the plaintiff/appellant and obtained an order of *status quo* from the Court. The defendant No.2 is also trying to change the nature of the suit schedule property by making constructions thereon.

(xi) Paragraph No.17 states that the defendant No.2 is trying to alienate the suit schedule property in favour of the 3rd parties.

13. Section IV of the plaint describes the cause of action for filing of the Suit. The plaintiff states that the cause of action arose on 16.08.2022 when the registered Will Deed was executed by defendant No.1 and on 09.12.2022 when the defendant No.1 cancelled the Will Deed and again on the same date i.e., 09.12.2022 when the defendant No.1 executed the Gift Settlement Deed in favour of defendant No.2. The cause of action further arose in the month of December 2022, when the plaintiff requested the defendants to partition the suit schedule property and again in December 2022 when the defendants refused the plaintiff's proposal for partition.

14. Section IX of the plaint contains the prayers. The plaintiff/appellant has prayed for partition of the suit schedule property

and for allotment of 1/3rd share to the plaintiff along with separate possession. The plaintiff has also prayed for declaration that the Gift Settlement Deed dated 09.12.2022 is null and void and not binding on the plaintiff.

15. We have heard learned Senior Counsel appearing for the parties and have also carefully perused the plaint with particular emphasis on section IV which embodies the cause of action for instituting the Suit.

16. The plaint discloses the following admitted facts:

- (i) The respondent No.1/mother purchased the suit schedule property under a registered Sale Deed dated 05.11.1988.
- (ii) The respondent No.1/mother executed a registered Will Deed on 16.08.2022 which contains a specific assertion to the effect that the respondent No.1 owns self-acquired assets and has unfettered and absolute right to dispose of the assets as per her wish. The only property mentioned in the Will Deed is the house property situated at Road No.55, Jubilee Hills, Hyderabad, purchased under the Sale Deed dated 05.11.1988 duly registered in the office of the Sub-Registrar, Hyderabad. The concerned paragraph also states that the respondent No.1 is residing in the said house along with her 3 sons and their respective families.

- (iii) The appellant has relied on the Will Deed at paragraphs 4, 5 and 6 of the plaint without questioning the absolute ownership of respondent No.1 or describing her as an ostensible owner of the property as opposed to the real owner under the provisions of The Prohibition of Benami Property Transactions Act, 1988 ('the 1988 Act').
- (iv) The appellant in fact unequivocally states in paragraph 6 that none of the respondents had any objection to the division of the shares of the suit schedule property.
- (v) The appellant complains of the cancellation of the Will Deed vide the Deed of Cancellation of Will Deed dated 09.12.2022 in paragraph 7 and claims that the respondent No.1/mother could not have executed the said Gift Deed in favour of respondent No.2 on the same date i.e., 09.12.2022.

The Plaint discloses conflicting Causes and Claims

- (vi) The appellant has not sought for a declaration of the suit schedule property as a Joint Family Property which is amenable to partition despite being aware of the registered Will Deed dated 16.08.2022, the cancellation thereof on 09.12.2022 and the registered Gift Settlement Deed dated 09.12.2022.

(vii) The appellant has filed a Suit for partition simpliciter, that too for division of the property in 3 shares instead of 4 i.e., leaving 1 of the 3 respondents out of the partition.

(viii) The appellant has only sought for cancellation of the Gift Settlement Deed dated 09.12.2022 without seeking cancellation of the Deed cancelling the Will Deed. This in effect would restore the Deed of Cancellation of the Will Deed which was executed on the same day i.e., on 09.12.2022.

17. Therefore, from the above it is clear that the appellant, as the plaintiff, has acknowledged the absolute right of the respondent No.1/mother over the suit schedule property. The list of documents annexed to the plaint, including the Will Deed dated 16.08.2022, contains the declaration of the respondent No.1 that the suit schedule property is self-acquired and she has unfettered and absolute right to dispose of the same according to her wish. The Will Deed also declares that the respondent No.1 is the owner of the suit schedule property which she had purchased under a registered Sale Deed dated 05.11.1988.

18. Hence, the appellant's complaint of cancellation of the Will Deed on 09.12.2022 or with regard to the Gift Settlement Deed executed by the

respondent No.1 in favour of the respondent No.2 on the same day is without any basis.

19. Moreover, the appellant's complaint against the Deed of Cancellation and the registered Gift Settlement Deed is clearly contrary to the appellant's acceptance of the Will Deed dated 16.08.2022 where the respondent No.1 unequivocally declared her absolute ownership of the suit schedule property.

The contradictions demolish the Cause of Action

20. The contradictory statements made in the plaint cannot be seen as inconsequential but one that collapses the substratum of the appellant's case, as the plaintiff. In other words, it is not merely a case of approbation and reprobation but of the plaintiff setting up mutually-destructive causes of action. To reiterate, once the appellant/plaintiff acknowledges that the suit schedule property is the self-acquired property of the respondent No.1 and the respondent No.1 had absolute ownership of the property, the plaintiff cannot subsequently plead that the very same property is transformed to a Joint Family Property which is amenable to partition.

21. Moreover, the statements in the plaint indicate that the appellant was aware of the registered Will Deed dated 16.08.2022, the cancellation

of the Will Deed on 09.12.2022 and the registered Gift Settlement Deed executed by the respondent No.1 on 09.12.2022 wherein the respondent No.1 reiterated that the suit schedule property is self-acquired out of her own personal funds without any family or external support and that her 3 sons, (including the appellant) were aware of the cancellation of the Will Deed on 09.12.2022.

22. The plaint however does not contain any prayer for declaration that the suit schedule property is a Joint Family Property which is available for partition. The plaint only contains a prayer for partition. Moreover, the partition is curiously for 3 shares, as opposed to 4, i.e., between the respondent No.1/mother, the appellant, the respondent No.2 and respondent No.3.

23. Even more curious is the fact that the appellant has only prayed for cancellation of the Gift Settlement Deed dated 09.12.2022 and not sought for cancellation of the Will Deed, which in effect would mean that the plaintiff seeks restoration of the position immediately prior to cancellation of the Gift Settlement Deed. How this would save the appellant/plaintiff's interest/objective in filing the Suit appears to be a vexed question.

The Cause of Action is self-destructive

24. To summarize, the plaint fails to disclose a cause of action for the following reasons.

- (i) The appellant has accepted and acknowledged the repeated assertions of the ownership of the respondent No.1 over the suit schedule property in the Will Deed and the Gift Settlement Deed. The declaration that the ownership arises out of the self-acquired property of respondent No.1 is also in terms of section 14(1) of The Hindu Succession Act, 1956 ('the 1956 Act').
- (ii) The statement in the plaint that the property is a Joint Family Property available for partition is hence clearly dubious.
- (iii) The plaint does not contain a single pleading on the respondent No.1 holding the property as the ostensible owner as opposed to the real owner under the 1988 Act. This was orally argued on behalf of the appellant during the course of submissions.
- (iv) The plaint also states that the appellant did not have any complaint when the Will Deed was executed which specifically records the fact of the ownership of respondent No.1 of the suit schedule property.

- (v) From the cause of action paragraphs in the plaint, it is clear that the appellant first complained against the cancellation of the Will Deed. However, the plaint does not contain any relief with regard to the said cancellation. The appellant has only prayed for cancellation of the Gift Settlement Deed.
- (vi) The plaint contains a prayer for partition of the suit schedule property but does not contain any prayer for declaration that the said property is a Joint Family Property which is amenable to partition. This is directly contradictory to the property being self-acquired by the respondent No.1 as stated in the Will Deed.

“Cause of Action”

25. The expression “Cause of Action” has been described to mean every fact which would be necessary for the plaintiff to prove, if traversed, in order to support the plaintiff’s right to judgment. In other words, cause of action consists of a bundle of material facts which are necessary for the plaintiff to prove in order to entitle the plaintiff to the relief claimed. For ascertaining cause of action, the averments made in the plaint must be read in its entirety - and not in isolation - and must be held to be correct. Simply put, the plaintiff must prove its case on the averments made in the plaint and further the relief claimed must have a real nexus with the cause of action pleaded.

The Plaintiff must disclose a clear Right to Sue – not an Illusion or Mirage of a Cause of Action

26. The test for an application for rejection of plaintiff under Order VII Rule 11 of the CPC - where the plaintiff does not disclose a cause of action – is whether the statements made in the plaintiff, taken to be correct in their entirety, would entitle the plaintiff to a decree : *Liverpool & London S.P. & I Assn. Ltd. Vs. M.v. Sea Success I*¹. The plea taken by the defendant in the written statement or in an application for rejection of plaintiff would be irrelevant for a decision on an application for rejection of plaintiff : *Sopan Sukhdeo Sable Vs. Charity Commr.*,². In plain(t) terms, since a Court is not called upon to embark upon an enquiry of the truth or correctness of these averments, the statements must *prima facie* reflect a cause of action: *D.Ramachandran Vs. R.V. Janakiraman*³.

27. Shorn of further elaboration, a cause of action must include some act done by the defendant which leads the plaintiff to file a Suit and includes all the material facts on which the cause of action is found : *Swamy Atmananda Vs. Sri Ramakrishan Tapovanam*⁴. The plaintiff must disclose a clear right to sue i.e., an undiluted entitlement to relief as reflected from the statements in the plaintiff. Order VII Rule 11 of the CPC

¹ (2004) 9 SCC 512

² (2004) 3 SCC 137

³ (1999) 3 SCC 267

⁴ (2005) 10 SCC 51

may be pressed into service where a plaint is manifestly vexatious and meritless in not disclosing a clear right to sue : *T.Arivandandam Vs. T.V. Satyapal*⁵. The Supreme Court has frowned upon clever drafting for creating an illusory cause of action : *ITC Ltd. Vs. Debts Recovery Appellate Tribunal*⁶. Recent judgments of the Supreme Court have also dealt with the necessity of the plaint disclosing a valid Cause of Action – *Dahiben Vs. Arvindhbai Kalyanji Bhanushali (Gajra)*⁷ and *Ramisetty Venkatanna Vs. Nasyam Jamal Saheb*⁸.

28. Order VII Rule 11 of the CPC lists 6 cases in which a plaint should be rejected. The word “shall” in Order VII Rule 11 makes rejection mandatory where any of the 6 conditions exist including where the plaint does not disclose a cause of action, as in the present case. Order VII Rule 11 presumes dismissal of a Suit on rejection of the plaint without the rigour of trial. The only requirement is that the Court must conclude that the plaintiff has filed a meritless Suit by way of a plaint which fails to disclose a cause of action. The appellant’s argument that the cause of action pleaded in the plaint should have been tested in the trial is therefore contrary to the CPC as well as the case law.

⁵ (1977) 4 SCC 467

⁶ (1998) 2 SCC 70

⁷ (2020) 7 SCC 366

⁸ 202 SCC OnLine 521

29. In the present case, the plaintiff has filed a vexatious Suit where the causes of action are mutually-destructive and are extinguished by the time the plaint reaches the reliefs. This is an instance of a try-one's-luck plaint where the plaintiff has blown hot and cold and reversed his stand; from accepting the suit schedule property being a self-acquired property to questioning the right of the respondent No.1 to transfer the said property in favour of respondent No.2 by way of the Gift Settlement Deed. The plaint, in any event, lacks clarity, including in the articulation of what the plaintiff intends to say. The statements are vague to the extent of referring to the defendants as a group as opposed to the defendant No.1 (as the aggrieved party) who executed the Will Deed, the Cancellation of the Will Deed and the Gift Settlement Deed.

30. The Trial Court allowed the respondents' application under Order VII Rule 11 (a) and (d) of the CPC by reason of the appellant failing to include all the moveable and immovable properties in the name of the respondent No.1 as part of the suit schedule property. The Trial Court concludes that all the Joint Family Properties must be included in a Suit for partition. Although the aforesaid reason is irrelevant for deciding an application for rejection of plaint, we agree with the Trial Court's view that the appellant cannot change his stand after having acknowledged the respondent No.1 as the owner of the suit schedule property.

31. We accordingly hold that the plaint in O.S.No.124 of 2023 does not disclose a cause of action and is also barred by law under section 14(1) of the Hindu Succession Act, 1956 which preserves the right of a female Hindu to own self-acquired property. Hence, the Trial Court correctly rejected the appellant's plaint by allowing the respondents' application under Order VII Rule 11(a) and (d) of the CPC. We do not find any reason to interfere with the impugned order or have it set aside.

32. CCCA.No.62 of 2024, along with all connected applications, is dismissed.

There shall be no order as to costs.

MOUSHUMI BHATTACHARYA, J

M.G.PRIYADARSINI, J

August 20, 2024

BMS