

A P.V. GURU RAJ REDDY REP. BY GPA LAXMI NARAYAN
REDDY & ANR.

v.

B P. NEERADHA REDDY & ORS. ETC.
(Civil Appeal No. 5254 of 2006)

FEBRUARY 13, 2015

[**RANJAN GOGOI AND PRAFULLA C. PANT, JJ.**]

C *Code of Civil Procedure, 1908: Or.7, r.11 – Exercise of*
power under, scope – Discussed – In the instant case, suits
filed for declaration of title and possession – Plaintiff's case
was that they were living abroad and entrusted the defendants
the task of purchasing immovable property for them and when
D *they visited India, they came to know that the defendants*
purchased the property in the name of defendant no.3 and 4
– Immediately thereafter the plaintiff filed suit for declaration
of title and possession – Defendants contested the suit on the
ground of limitation and filed application for rejection of plaint
E *– Trial court dismissed the application – High Court set aside*
the order of trial court – Held: Both the suits were filed well
within three years of the date of knowledge, as claimed by the
plaintiffs, of the fact that the property had not been transferred
in their name by the defendants – The said averments made
F *in the plaint are accepted as correct for the purposes of*
consideration of the application u/Or.7 r.11 filed by the
defendants – The averments in the plaint did not disclose that
the suits were barred by limitation so as to justify rejection of
G *the plaint u/Or.7 r.11.*

Disposing of the appeal, the Court

HELD: Rejection of plaint under Order VII rule 11 of

the CPC is a drastic power conferred in the court to terminate a civil action at the threshold. It is the averments in the plaint that has to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order VII rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint *ex facie* do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial. In the present case, reading the plaint as a whole and proceeding on the basis that the averments made therein are correct, which is what the Court is required to do, it cannot be said that the said pleadings *ex facie* discloses that the suit is barred by limitation or is barred under any other provision of law. The claim of the plaintiffs with regard to the knowledge of the essential facts giving rise to the cause of action as pleaded will have to be accepted as correct. Both the suits were filed in July 2002 which was well within three years of the date of knowledge, as claimed by the plaintiffs, of the fact that the property had not been transferred in the name of plaintiff No.2 by the defendants Nos. 1 and 2. The said averments made in the plaint have to be accepted as correct for the purposes of consideration of the application under Order VII rule 11 filed by the defendants Nos. 1 and 2. [Paras 5, 6, 9] [1111-G-H; 1112-A-D; 1114-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No.5254 of 2006.

From the Judgment and Order dated 26.06.2003 of the

A High Court of Judicature, Andhra Pradesh at Hyderabad in Civil Revision Petition No. 1398 of 2003.

K. Radhakrishna, Promila for the Appellants.

B R. Venkataramani, G. N. Reddy, Pramod Reddy, M. Balashivudu, Yashraj Singh Bundela, Neelam Singh, Chandan Kumar, Anil Kumar Tandale, K. Maruthi Rao, K. Radha, Anjani Aiyagari for the Respondents.

C The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. This appeal seeks to challenge two separate though largely similar orders both dated 26th June, 2003 passed by the High Court of Andhra Pradesh at Hyderabad in Civil Revision Petition Nos.1398 and 1399 of 2003. By the aforesaid orders, the High Court, in reversal of the order of the learned trial judge, has allowed the applications filed by the defendants under Order VII rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the CPC"). Aggrieved, the plaintiffs are before us in this appeal.

E 2. Original Suit Nos. 71 and 72 of 2002 were filed by the plaintiffs (appellants herein) for declaration of title and possession. The case of the plaintiffs in both the suits were more or less similar. According to the plaintiffs as they were living abroad they had reposed trust and faith in defendants Nos.1 and 2 who are their close relatives (sister and brother-in-law of plaintiff No.1) to purchase immovable property in Hyderabad in the name of the plaintiff No.2. According to the plaintiffs, they had made funds available to the defendants Nos. 1 and 2 for the said purpose and had entirely relied on them.

G 3. The specific case of the plaintiffs in Original Suit No.71 of 2002 is to the effect that the property belonging to one Professor N.S. Iyengar was identified for purchase and an agreement was drawn up with the said person. According to H

the plaintiffs, they were informed by the defendants that Professor Iyengar has resiled from the agreement which required filing a suit for specific performance. According to the plaintiffs when they visited Hyderabad in November/December 1999, they could notice some construction activity in the plot belonging to Professor Iyengar. It is at that point of time that they had made enquiries and could come to know that though the suit for specific performance filed by the defendants was decreed, the sale deed was executed in the name of the defendant No.4 who is the brother-in-law of the defendant No.1. It is thereafter that the suit being Original Suit No.71 of 2002 was filed.

4. Insofar as Original Suit No.72 of 2002 is concerned, the plaintiffs' case is that the property belonging to one Professor B. Ramchander Rao was identified for purchase. Though the defendant Nos.1 and 2 informed the plaintiffs that the needful was done, it transpired that the said property was purchased on 31.8.1979 jointly in the name of plaintiff No.2 and the defendant No.3, who is the son of defendant No.1. According to the plaintiffs immediately after they came to know of the said facts, they had issued a legal notice on 20.12.1999 and on receipt of the reply to the said notice which contained an unequivocal denial of the plaintiffs' claim, the suit being Original Suit No.72 of 2002 was filed. Both the suits were filed in July, 2002.

5. Rejection of the plaint under Order VII rule 11 of the CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order VII rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that has to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of

A power under Order VII rule 11, the stand of the defendants in
the written statement or in the application for rejection of the
plaint is wholly immaterial. It is only if the averments in the plaint
ex facie do not disclose a cause of action or on a reading
thereof the suit appears to be barred under any law the plaint
B can be rejected. In all other situations, the claims will have to
be adjudicated in the course of the trial.

6. In the present case, reading the plaint as a whole and
proceeding on the basis that the averments made therein are
C correct, which is what the Court is required to do, it cannot be
said that the said pleadings ex facie discloses that the suit is
barred by limitation or is barred under any other provision of
law. The claim of the plaintiffs with regard to the knowledge of
the essential facts giving rise to the cause of action as pleaded
D will have to be accepted as correct. At the stage of
consideration of the application under Order VII rule 11 the stand
of the defendants in the written statement would be altogether
irrelevant.

E 7. In Original Suit No.71 of 2002, the plaintiffs had averred
that it is only in November/December 1999 when they came to
India that they could come to know that the property of Professor
Iyengar was sold to somebody else. Thereafter, they had issued
a legal notice on 3.12.1999. The plaintiffs have further averred
F that it is only from the reply of the said notice that they could
come to know of the true facts and the conduct of the
defendants in conspiring to cheat the plaintiffs. Thereafter,
according to the plaintiffs after obtaining the copy of the decree
of specific performance passed in O.S. No.24/1985 and the
G judgment of the Appeal Court in A.S. 215/87 as well as the
judgment of the High Court dated 13.1.1995, the suit in question
was filed, inter alia, for:

H “(a) For a declaration that the Plaintiff has title over the

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schedule property and for possession of the suit
schedule property from the defendants. A

(b) For cancellation of the judgment and decree passed
in O.S. 24/85 on the file of the Court of the Principal
Subordinate Judge, Ranga Reddy District at B
Saroornagar regarding the schedule property.

(c) For permanent injunction restraining the defendants,
their men and others on their behalf from further
alienating the schedule property in favour of any C
other person.

(d) For costs."

8. Similarly in Original Suit No.72 of 2002, according to
the plaintiffs, they could come to know of the sale deed dated D
31.8.1979 executed in favour of the plaintiff No.2 and the
defendant No.3 only in the year 1999 immediately whereafter
they had issued the legal notice dated 20.12.1999. According
to the plaintiffs it is only subsequently that they came to know E
of sale of half of the scheduled property in favour of the
defendant No.5. Accordingly they had filed the Original Suit
No.72 of 2002 claiming the following reliefs:

"(a) For a declaration that the schedule property is the
property of the 2nd plaintiff and for possession of
the suit schedule property from the defendants to
the 2nd plaintiff. F

(b) For cancellation of the sale deed, dt. 31.8.1979
jointly executed in the name of the 2nd plaintiff and
the 3rd defendant, so far as the 3rd defendant is
concerned. G

(c) For cancellation of the sale deed, dated
10.02.1999, executed in the name of the 5th H

A defendant.

(d) For permanent injunction restraining the defendants, their men and others on their behalf from further alienating the schedule property in favour of other persons.

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(e) For costs.”

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9. Both the suits were filed in July 2002 which is well within three years of the date of knowledge, as claimed by the plaintiffs, of the fact that the property had not been transferred in the name of plaintiff No.2 by the defendants Nos. 1 and 2. The aforesaid averments made in the plaint will have to be accepted as correct for the purposes of consideration of the application under Order VII rule 11 filed by the defendants Nos. 1 and 2. If that be so, the averments in the plaint would not disclose that either of the suits is barred by limitation so as to justify rejection of the plaint under Order VII rule 11 of the CPC.

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10. There is yet another issue framed by the High Court as Question No.3 which is in the following terms:

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“ 3. Whether the claims made in the suit, as appearing in the statement in the plaint, are hit by the provisions of the Benami Transactions (Prohibition) Act, 1983?”

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11. While in Civil Revision Petition No.1398 of 2003 the said issue was decided in favour of the plaintiffs, in Civil Revision Petition No.1399 of 2003 the same was decided against the plaintiffs. The finding of the High Court in this regard proceeds on the basis that the plaintiffs had admitted in the plaint that the property purchased in the name of the defendant No.3 belonged to the plaintiffs. Therefore the provisions of Benami Transactions (Prohibition) Act, 1988 would apply. We

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fail to see how the aforesaid view of the High Court can be sustained. The suits in question were not filed for recovery of any property held in benami by the defendants. Rather, the suit was for declaration of plaintiffs' title and for recovery of possession from the defendants, as already noted.

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12. For the aforesaid reasons, the order of the High Court dated 26th June, 2003 has to be reversed. We, accordingly, do so and allow this appeal and direct the learned trial Court to hear and decide both the suits i.e. Original Suit No.71 of 2002 and Original Suit No.72 of 2002 on merits at an early date.

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13. The appeal is disposed of in the above terms.

Devika Gujral

Appeal disposed of.

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