RAMISETTY VENKATANNA & ANR.

v.

NASYAM JAMAL SAHEB & ORS.

(Civil Appeal No. 2717 of 2023)

APRIL 28, 2023

[M. R. SHAH* AND C. T. RAVIKUMAR, JJ.]

Civil Procedure Code, 1908 – Or. VII r. XI (a) and (d) – Rejection of plaint – The respondents-plaintiffs had filed a suit in the year 2014 before the Trial Court seeking declaration of title, permanent injunction and cancellation of various documents – Appellants-defendants submitted that the suit of plaintiffs was based on premise that there was an error in partition deed dated 11.03.1953 and subsequent transactions – The appellant-defendants, filed an application under O. VII r. XI to reject the plaint – Trial Court dismissed the said application – Appellant filed revision application before the High Court, which was also dismissed – On appeal, held: By clever drafting and not asking any relief with respect to partition deed, the plaintiffs have tried to circumvent the provision of limitation act and have tried to maintain the suit which is nothing but abuse of process of court and the law – If partition deed was to be challenged which as such, the plaintiffs are attempting to do virtually, the suit would be barred by limitation having being instituted after lapse of 61 years from the partition deed – Plaint ought to have been rejected being vexatious, illusory cause of action and barred by limitation – Judgment of High Court and Trial Court set aside.

Allowing the appeal, the Court

HELD:

1. **It appears that the suit is essentially based upon the premise that there was an error in partition deed dated 11.03.1953 and in partition deed survey number 706/A9 was wrongly mentioned. Therefore, it was the case on behalf of the plaintiffs that one 'S' (son of original land owner) and other descendants including the vendors of the appellants never had any right to effect transaction in respect of land in survey number 706/A9. Deliberately and purposely, the plaintiffs have not prayed any relief with respect to partition deed dated 11.03.1953 though it is the case on behalf of the plaintiffs that there was an error in partition deed dated 11.03.1953. It is to be noted that pursuant to the partition deed dated 11.03.1953, after the demise of the original land owner, his**

* Author

five children got partitioned the properties under a registered partition deed dated 11.03.1953. Since 2010, the appellants are in possession of the land purchased vide registered sale deed dated 24.08.2010. Without challenging partition deed dated 11.03.1953 and even subsequent gift deed dated 24.01.1968, the plaintiffs have instituted the present suit with the prayers which is nothing but a clever drafting to get out of the limitation. If partition deed dated 11.03.1953 was to be challenged which as such, the plaintiffs are attempting to do virtually, the suit would be hopelessly barred by limitation having being instituted after lapse of 61 years from the partition deed. [Para 5]

2. Applying the law laid down by this Court in the various decisions on the applicability of Order VII Rule XI to the facts of the case on hand, this Court is of the opinion that the plaint ought to have been rejected in exercise of powers under Order VII Rule XI(a) and (d) of CPC being vexatious, illusory cause of action and barred by limitation. By clever drafting and not asking any relief with respect to partition deed dated 11.03.1953, the plaintiffs have tried to circumvent the provision of limitation act and have tried to maintain the suit which is nothing but abuse of process of court and the law. [Para 6]

T. Arivandandam Vs. T.V. Satyapal **(1977) 4 SCC 467 : [1978] 1 SCR 742;** *Sopan Sukhdeo Sable Vs. Charity Commr.* **(2004) 3 SCC 137 : [2004] 1 SCR 1004;** *Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal* **(2017) 13 SCC 174 : [2017] 5 SCR 294;** *Ram Singh Vs. Gram Panchayat Mehal Kalan,* **(1986) 4 SCC 364 : [1986] 3 SCR 831 – relied on.**

Raj Narain Sarin Vs. Laxmi Devi and Ors. **(2002) 10 SCC 501;** *The Palestine Kupat Am Bank Co-operative Society Ltd. Vs. Government of Palestine and Ors.* **AIR (35) 1948 Privy Council 207;** *Subhaga and Ors. Vs. Shobha and Ors.* **(2006) 5 SCC 466;** *Nusli Neville Wadia Vs. Ivory Properties and Ors.* **(2020) 6 SCC 557: [2019] 15 SCR 795 – referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No.2717 of 2023.

From the Judgment and Order dated 03.03.2022 of the High Court of Andhra Pradesh at Amravati in CRP No.179 of 2021.

Anand Sanjay M Nuli, Agam Sharma, Dharm Singh, Suraj Kaushik, Nanda Kumar K B, Ms. Akhila Wali, Shiva Swaroop, M/s. Nuli & Nuli, Advs. for the Appellants.

HARYANA URBAN DEVELOPMENT AUTHORITY & ANR. v. JAGDEEP SINGH

B Adinarayana Rao, Sr. Adv., Ms. Tatini Basu, Kumar Shashank, Bharat J Joshi, Ms. Shreshta Ragasandesh, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Andhra Pradesh at Amaravati in Revision Petition (CRP) No. 179/2021, by which, the High Court has dismissed the said revision petition and has affirmed the order passed by the learned Trial Court dismissing/rejecting the application submitted by the appellants herein – original defendant Nos. 9 & 10 under Order VII Rule XI of CPC, the original defendant Nos. 9 & 10 have preferred the present appeal.

2. The facts leading to the present appeal in a nutshell are as under: -

   2.1 That one Nasyam Jamal Saheb was the owner of 4 acres 16 cents of land in Survey No. 700/A7B and Survey No. 706/A9 of Nandyal Town and Mandal, Kurnool District, Andhra Pradesh, and several other properties. After the demise of Nasyam Jamal Saheb, his five children namely, 1) Nasyam Jafar Saheb; 2) Nasyam Dasthagiri Saheb; 3) Nasyam Ibrahim Saheb; 4) Sarambee; and 5) Jainabee got partitioned the properties of their father (including 4 acres 16 cents) under a registered partition deed dated 11.03.1953. The predecessor in interest of plaintiffs N. Ibrahim Saheb got 1 acre and predecessor in interest of vendors of the appellants herein Sarambee got 1 acre 16 cents. That thereafter, Sarambee being the absolute owner of 1 acre 16 cents in Survey No. 706/A9 executed a registered gift deed dated 24.01.1968 in favour of her eldest daughter Kareembee (mother of vendors of appellants herein) to an extent of lands measuring 58 cents. That Sarambee vide another gift dated 24.01.1968 gifted the remaining 58 cents in Survey No. 706/A9 to her other daughter Ashabee and her two sons Khasimsa and Abdul Rajak. That thereafter, in the year 2003, three sons of Ashabee further partitioned the land measuring 58 cents. Each of the sons got 19.33 cents of land each. Similarly, after the death of Kareembee, her

three sons effected an oral partition amongst themselves. Two sons of Kareembee – Khatif Khaja Hussain and Khatif Noor Ahammed sold the land in Survey No. 706/A9 to an extent of 58 cents vide two registered sale deeds dated 24.08.2010 in favour of the appellants for a valid sale consideration of Rs. 14,52,000/- and Rs. 13,56,000/-, respectively. The possession of the said land was handed over to the appellants and they developed the land.

2.2 It appears that thereafter, children of Khatis Khader Basha (third son of Kareembee) filed O.S. No. 39/2011 before the III Additional District Judge, Kurnool at Nandyal against other two sons of Kareembee and the appellants seeking partition and separate possession of their share in the property sold to the appellants herein. The said suit came to be referred to Lok Adalat and was settled after the appellants herein paid Rs. 14,00,000/- to the plaintiffs therein.

2.3 It appears that thereafter in the year 2013 Nandyal Municipality in a bid to lay an 80 feet wide master plan road proposed to widen a 30 feet road to 80 feet. In the said road widening programme, the land of appellants to an extent of 3.5 cents was affected. The appellants executed a registered gift deed in favour of Nandyal Municipality for an extent of 3.5 cents of land vide document No. 2474/2013. The Municipality thereafter awarded transferable development right to the appellants herein to an extent of 283.24 sq. meters. That thereafter, in the year 2014, respondent Nos. 1 to 8 herein – original plaintiffs instituted O.S. No. 35/2014 and prayed for following reliefs: -

(a) For declaring the title of the plaintiffs to the suit property within the boundaries mentioned in the plaint schedule which is in survey No.700/A7B and 706/A9 of Abdulla Khan Thota Nandyal Municipal Limits and for consequential permanent injunction restraining the defendants their men agents successors in interest and anybody on their behalf from trespassing into the suit property or from dispossessing the plaintiffs from the suit property in any manner what-so-ever,

(b) Suit for relief of cancellation of I)Registered Sale Deed bearing Document No. 124/2008 dated 09.01.2008 executed by D3 to D6 in favour of D7, 2)Registered Sale Deed bearing Document No.3504/2009 dated 18.07.2009 executed by D3 to D6 in favour of D8, 3)Registered Partition Deed bearing document No.4624/2009 dated 31.03.2009 executed in between D3 to D6 in respect of C Schedule item No.2 and D Schedule item No.2, 4)Registered Sale Deed bearing Document No.6591/2010 dated 24.08.2010 executed by D1 and D2 in favour of D9 and 5)Registered Sale Deed bearing Document No.6592/2010 dated 24.08.2010 executed by D1 and D2 in favour of D10 By declaring them as null and void documents in respect of the suit property.

2.4 That the appellants herein filed IA No. 369/2014 in O.S. No. 35/2014 praying to reject the plaint in exercise of powers under Order VII Rule XI(a) and (d) of CPC. The learned Trial Court dismissed the said application vide order dated 11.03.2020.

2.5 Feeling aggrieved and dissatisfied with the order passed by the learned Trial Court rejecting the application under Order VII Rule XI and refusing to reject the plaint, the appellants herein – original defendant Nos. 9 and 10 filed the revision application before the High Court. By the impugned judgment and order the High Court has dismissed the said revision application which has given rise to the present appeal.

3. Shri Anand Nuli, learned counsel appearing on behalf of the appellants has vehemently submitted that in the facts and circumstances of the case both, the learned Trial Court as well as the High Court has committed a grave error in not allowing the application under Order VII Rule XI of the CPC and consequently, not rejecting the plaint.

3.1 It is submitted that as such the suit was clearly barred by limitation and therefore, the plaint ought to have been rejected under Order VII Rule XI(d) of the CPC.

3.2 It is further submitted that the High Court has not properly appreciated the fact that in fact, the suit was barred by limitation as the same was instituted 61 years after the execution of partition deed dated 11.03.1953.

3.3 It is further submitted that the High Court has failed to take into consideration that the suit of the plaintiffs is essentially

based upon the premise that there was an error in partition deed dated 11.03.1953 and therefore, Sarambee and her descendants, including the vendors of the appellants herein, never had any right to effect transactions in respect of land in Survey No. 706/A9. It is submitted that the High Court has not properly appreciated the fact that as such the plaintiffs have cleverly drafted the plaint and intentionally omitted to seek the relief of rectification of partition deed dated 11.03.1953 in order to circumvent the law of limitation. It is submitted that as such by clever drafting the plaintiffs have tried to bring the suit within the law of limitation, which is otherwise barred by limitation.

3.4 Relying upon the decision of this Court in the case of **T. Arivandandam Vs. T.V. Satyapal (1977) 4 SCC 467,** it is prayed that as the plaint is vexatious and meritless and creates illusion of a cause of action by clever drafting the same should be rejected at the earliest.

3.5 It is submitted that if partition deed dated 11.03.1953 was to be challenged, which the plaintiffs are attempting to do virtually, the suit would be hopelessly barred by limitation having being instituted after a lapse of 61 years from the partition deed.

3.6 It is submitted that as such the plaintiffs did not have any cause of action to institute the suit. It is submitted that all the registered sale deeds and the partition deed alleged to be forming cause of action of the suit are executed in accordance with the respective parties in accordance with the rights granted to them/their legal ascendants under partition deed dated 11.03.1953.

3.7 It is further submitted that the High Court ought to have appreciated and/or considered that the present suit is frivolous and vexatious because the plaintiffs are attempting to re-partition; and unsettle the title and possession of numerous family members and third parties like the appellants herein by alleging that there was an error in partition deed dated 11.03.1953 which was executed by grandparents of parties with their free will at a point when the parties were not even born.

3.8 Making the above submissions and relying upon the decision of this Court in the case of **Raj Narain Sarin Vs. Laxmi**

Devi and Ors. (2002) 10 SCC 501 and in the case of **T. Arivandandam (supra),** it is prayed to allow the present appeal and quash and set aside the order passed by the learned Single Judge as well as that of the learned Trial Court rejecting the application under Order VII Rule XI and consequently, reject the plaint being barred by the limitation and the suit being vexatious and illusory cause of action.

4. Present appeal is vehemently opposed by Shri B. Adinarayana Rao, learned Senior Advocate appearing on behalf of the original plaintiffs.

4.1 It is vehemently submitted by learned Senior Advocate that in the facts and circumstances of the case neither learned Trial Court nor the High Court have committed any error in dismissing the application under Order VII Rule XI of the CPC and in not rejecting the plaint.

4.2 It is vehemently submitted by learned Senior Advocate appearing on behalf of the original plaintiffs that as such in the present case neither partition deed dated 11.03.1953 nor the boundaries of the properties are in dispute. It is submitted that the dispute is limited to the wrong survey number mentioned therein with respect to the share of Nasyam Ibrahim, Sarambee and Jainabee only.

4.3 It is submitted that as per the settled position of law what is important is boundaries and not the survey number mentioned in the document. Reliance is placed upon the decision of the Privy Council in the case of **The Palestine Kupat Am Bank Co-operative Society Ltd. Vs. Government of Palestine and Ors. AIR (35) 1948 Privy Council 207** (para 7) as well as the decision of this Court in the case of **Subhaga and Ors. Vs. Shobha and Ors. (2006) 5 SCC 466**, it is submitted that as laid down in the aforesaid decisions that even if there is any discrepancy in the document the boundary should prevail.

4.4 It is further submitted that as such while considering the application under Order VII Rule XI and the prayer for rejection of the plaint, only averments of plaint are material and can be taken into consideration and any evidence or averments made in

the written statement cannot be considered. Reliance is placed on the decision of this Court in the case of **Nusli Neville Wadia Vs. Ivory Properties and Ors. (2020) 6 SCC 557.**

4.5 Making the above submissions it is prayed to dismiss the present appeal.

5. We have heard learned counsel appearing on behalf of the respective parties at length. We have also gone through the averments made in the plaint. On going through the averments, it appears that the suit is essentially based upon the premise that there was an error in partition deed dated 11.03.1953 and in partition deed survey number 706/A9 was wrongly mentioned. Therefore, it is the case on behalf of the plaintiffs that Sarambee and other descendants including the vendors of the appellants never had any right to effect transactions in respect of the land in survey number 706/A9. However, it is required to be noted that despite the above, very cleverly the plaintiffs have not sought any relief with respect to partition deed dated 11.03.1953. Deliberately and purposely, the plaintiffs have not prayed any relief with respect to partition deed dated 11.03.1953 though it is the case on behalf of the plaintiffs that there was an error in partition deed dated 11.03.1953. It is to be noted that pursuant to the partition deed dated 11.03.1953, after the demise of the original land owner Nasyam Jamal Saheb, his five children namely, 1) Nasyam Jafar Saheb; 2) Nasyam Dasthagiri Saheb; 3) Nasyam Ibrahim Saheb; 4) Sarambee; and 5) Jainabee got partitioned the properties under a registered partition deed dated 11.03.1953. Under the registered partition deed, predecessor in interest of plaintiffs, N. Ibrahim Saheb got 1 acre and predecessor in interest of vendors of the appellants Sarambee got 1 acre 16 cents. All the parties to the registered partition deed acted upon the said partition deed. That thereafter, further transaction took place and Sarambee executed a registered gift deed dated 24.01.1968 in favour of her eldest daughter Kareembee – mother of the vendors of the appellants to an extent of lands measuring 58 cents. That thereafter, two sons of Kareebee who became co-owner on the death of Kareembee executed the registered sale deed dated 24.08.2010 in favour of the appellants in Survey No. 706/A9 to an extent of land measuring 58 cents for a valid sale consideration. Since 2010, the

appellants are in possession of the land purchased vide registered sale deed dated 24.08.2010. Without challenging partition deed dated 11.03.1953 and even subsequent gift deed dated 24.01.1968, the plaintiffs have instituted the present suit with the aforesaid prayers which is nothing but a clever drafting to get out of the limitation. If partition deed dated 11.03.1953 was to be challenged which as such, the plaintiffs are attempting to do virtually, the suit would be hopelessly barred by limitation having being instituted after lapse of 61 years from the partition deed.

5.1 In the case of **T. Arivandandam (supra)** in paragraph 5 while considering the provision of Order VII Rule XI, this Court has observed as under: -

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember 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, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC. An activist Judge is the answer to irresponsible law suits."

5.2 In the case of **Sopan Sukhdeo Sable Vs. Charity Commr., (2004) 3 SCC 137** in paras 11 and 12, this Court has observed and held as under:

"11. In ITC Ltd. v. Debts Recovery Appellate Tribunal [ITC Ltd. v. Debts Recovery Appellate Tribunal, (1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

12. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See T. Arivandandam v. T.V. Satyapal [(1977) 4 SCC 467].)"

5.3 In the case of **Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal, (2017) 13 SCC 174,** this Court observed and held as under:

"7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of

action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

5.4 In the case of **Ram Singh Vs. Gram Panchayat Mehal Kalan, (1986) 4 SCC 364,** this Court observed and held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by law of limitation. Similar view has been expressed by this Court in the case of **Raj Narain Sarin (supra).**

6. Applying the law laid down by this Court in the aforesaid decisions on the applicability of Order VII Rule XI to the facts of the case on hand, we are of the opinion that the plaint ought to have been rejected in exercise of powers under Order VII Rule XI(a) and (d) of CPC being vexatious, illusory cause of action and barred by limitation. By clever drafting and not asking any relief with respect to partition deed dated 11.03.1953, the plaintiffs have tried to circumvent the provision of limitation act and have tried to maintain the suit which is nothing but abuse of process of court and the law.

7. Now, so far as the reliance placed on the decision of the Privy Council referred to hereinabove and on the decision of this Court in the case of **Subhaga (supra)** are concerned, there cannot be any dispute with respect to the proposition of law laid down in the aforesaid two decisions. However, the question is the suit being barred by limitation and the illusory cause of action.

7.1 Now so far as the reliance placed upon the decision of this Court in the case of **Nusli Neville Wadia (supra)** is concerned, again there cannot be any dispute with respect to the proposition of law laid down by this Court that while deciding the application under Order VII Rule XI, mainly the averments in the plaint only are required to be considered and not the averments in the written statement. However, on considering the averments in the plaint as they are, we are of the opinion that the plaint is ought to have been rejected being vexatious, illusory cause of action and barred by limitation and it is a clear case of clever drafting.

8. In view of the above and for the reasons stated, the impugned judgment and order passed by the High Court and that of the learned Trial Court rejecting the application under Order VII Rule XI are unsustainable and the same deserve to be quashed and set aside and are accordingly, quashed and set aside. Consequently, the application submitted by the appellants – original defendant Nos. 9 and 10 to reject the plaint in exercise of powers under Order VII Rule XI(a) and (d) of the CPC is hereby allowed and consequently, the plaint of Civil Suit (O.S.) No. 35/2014 is ordered to be rejected. Present appeal is accordingly allowed. No costs.

Headnotes prepared by: Ankit Gyan *Result of the case:* Appeal allowed.
(*Assisted by :* Abhishek Agnihotri and Aarsh Choudhary, LCRAs)