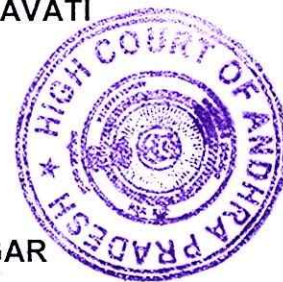


IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

TUESDAY, THE TWENTY FIFTH DAY OF JULY
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE JUSTICE DR V R K KRUPA SAGAR



CIVIL REVISION PETITION NO: 478 OF 2020

Petition under Article 227 of the Constitution of India aggrieved by the order dt.18-12-2019 in I.A.No. 697 of 2017 in O.S.No.88/2016 on the file of the Court of the Junior Civil Judge, Mylavaram.

Between:

1. Kukkala Nagendramma, Wife of (Late) Narayana, Hindu, aged about 65 years, Cultivation and Properties, residing at G.Konduru Village G.Konduru Mandalam Krishna District.
2. Kukkala Bhikshmaiah, Son of Late. Narayana, Hindu, aged about 42 years, Agriculture and Properties, Residing at G.Konduru Village, G.Konduru Martdalam, Krishna District.

**...Petitioners/Petitioners/Defendants No.1 & 2
AND**

1. Pajjuru Tulasamma, Wife of (Late) Kotaiah, Hindu, aged about 60 years, Cultivation and Properties, G.Konduru, Krishna District.
2. Pajjuru Mangeswara Rao, Son of (Late) Kotaiah, Hindu, aged about 30 years, Cultivation and Properties, Residing at G.Konduru Village, G.Konduru Mandalam, Krishna District
3. Pajjuru Ravi Kumar, Son of (Late) Kotaiah, Hindu, aged about 30 years, Cultivation and Properties, Residing at G.Konduru Village, G.Konduru Mandalam, Krishna District.
4. Pajjuru Syam, Son of (Late) Kotaiah, Hindu, aged about 30 years, Cultivation and Properties, Residing at G.Konduru, Krishna District.

...Respondents/Respondents/Plaintiffs

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings in O.S.No.88/2016 on the file of Hon'ble Junior Civil Judge, Mylavaram pending disposal of the main C.R.P.

Counsel for the Petitioner: SRI. KRISHNA RAO PARITALA

Counsel for the Respondents:

The Court made the following Order:

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

CIVIL REVISION PETITION No.478 of 2020

ORDER:

Defendants in the suit filed this Civil Revision Petition under article 227 of the Constitution of India questioning the correctness of Order dated 18.12.2019 of learned Junior Civil Judge, Mylavaram in I.A.No.697 of 2017 in O.S.No.88 of 2016.

2. Respondents herein are the plaintiffs in the suit. Despite notices being served, none entered appearance.

3. Learned counsel for revision petitioners submitted arguments.

4. O.S.No.88 of 2016 is a suit filed by the plaintiffs wherein they prayed for granting permanent injunction restraining the defendants from interfering with peaceful possession and enjoyment of the plaintiffs over the plaint schedule property which is Ac.0.25 Cents of land in R.S.No.321/2C of G-Konduru Village of Krishna District. There are two defendants in the suit. Those defendants filed I.A.No.697 of 2017 under Order VII Rule 11(a) and (d) and Section 151 CPC seeking for rejection of the plaint. By the impugned order, learned trial Court dismissed the

said petition. Aggrieved by it, defendants preferred this Civil Revision Petition.

5. Since controversy revolves around maintainability or rejection of the plaint, it is necessary to see what was contained in the plaint. It is stated in the plaint that the plaint schedule property was owned by Sri Kukkala Narayana. He executed a possessory agreement for sale dated 24.08.1992 in favour of Sri Pajjuru Kotaiah and received the sale consideration and delivered possession of the property to the purchaser. The purchaser Sri Pajjuru Kotaiah having entered into possession on the date of agreement for sale continued to hold possession of the property and he enjoyed it and he died intestate on 12.07.2010. On his death, his entire estate including the property that he had got under the agreement for sale devolved upon his wife and three children. His wife and three children are the plaintiffs who filed the suit. The vendor Sri Kukkala Narayana died. Defendant No.1 is his wife. Defendant No.2 is his son. Plaint further states that after the death of Sri Pajjuru Kotaiah, the plaintiffs continued to hold possession of the plaint schedule property and Revenue authorities recognised their possession and mutated the entries in the Revenue records and

issued 1B forms, Adangals and Pattadar and title deed passbooks in favour of plaintiff No.1. While so, the defendants on 02.06.2016, without any right over the property, illegally came to the plaint schedule property and forcibly attempted to remove the plaintiffs from possession of the property and with the help of neighbours, plaintiffs were able to thwart it. Defendants left the place by threatening that they would forcibly occupy the property. To avoid bloodshed and for protecting their possession, they have filed this suit seeking for permanent injunction.

5. It is the above referred plaint that was sought to be rejected by the defendants and for that purpose they filed I.A.No.697 of 2017. In that petition they stated that the plaint alleged agreement for sale dated 24.08.1992 is a forged, created and fabricated document. Without seeking for Specific Performance of such agreement for sale, the mere suit for permanent injunction is not maintainable as it is barred by Section 41(h) of Specific Performance Act, 1963. Since the relief of Specific Performance is not asked in the present suit, the present suit is barred under Order II Rule 2 CPC. It is for these reasons, defendants sought for rejection of the plaint.

6. As against that, a counter affidavit was filed by the plaintiffs in the suit. They stated that they filed a suit for Specific Performance and the same is O.S.No.144 of 2017 and the same is pending before the same Court. It is stated that the defendants in the present suit have been contesting the said suit also. In these circumstances, the present petition to reject the plaint is not maintainable. The other allegations made in the petition are baseless. For these reasons, they sought for dismissal of the petition.

7. After hearing learned counsel on both sides and after considering the material on record and after noticing the provisions contained in Order VII Rule 11 CPC, the learned Junior Civil Judge, Mylavaram dismissed the said petition stating that the grounds urged in the petition to reject the plaint indicate disputed questions of fact and law and they cannot be decided in this application and they shall fall for consideration only in the suit and therefore it found no merit in that petition and dismissed it.

8. In challenge to the said order, the revision petitioners filed this Civil Revision Petition stating that the learned trial Court

failed to comprehend the effect of Section 41(h) of Specific Performance Act and failed to assign appropriate reasons and reached to wrong conclusions causing injustice and therefore this revision petition has to be allowed and the plaint has to be rejected. Sri Krishna Rao, the learned counsel for revision petitioners in support of the contentions cited two rulings.

1. **Balram Singh V. Kelo Dedi** ¹. That was an appeal preferred before the Hon'ble Supreme Court of India challenging the judgment of High Court of Judicature at Allahabad in a Second Appeal. Their Lordships pronounced the law that on an Unregistered agreement for sale without seeking substantive relief of Specific Performance, the plaintiffs sought for permanent injunction only and in such event the relief of permanent injunction could not be granted. That was a case where defendants in the suit had also moved a counter claim seeking for getting back possession of the property that was in possession of the plaintiffs.

¹ 2022 LiveLaw (SC) 800

2. Chellingi Narayanamurthy V. Chellingi

Satyanarayana ². Based on an agreement for sale, a suit for perpetual injunction was filed. Plaintiffs claimed protection Under Section 53(A) Transfer of Property Act. Their Lordships considered Order II Rule 2 CPC and considered the facts and held that in the absence of prayer for Specific Performance perpetual injunction could not be granted.

9. It is on these two rulings, learned counsel for revision petitioners prays this Court to set aside the impugned order.

10. Having considered the submissions on facts and law, the following aspects are to be stated.

A plain reading of the plaint indicates an assertion on part of the plaintiffs about their continuing possession of the immovable property and an alleged interference from the defendants on a specified date and in the light of these facts, they sought for prayer to grant perpetual injunction in their favour to protect their possession. Thus, reading of the plaint discloses a cause of action. Whether such cause of action is true or false, whether such cause of action itself entitles them to the

² 2009 (4) ALT 379 (AP).

relief prayed for or not are matters to be considered on allowing the plaint to go for trial. Chapter 8 of Specific Relief Act, 1963 contains Section 41 provides circumstances in which a relief of injunction can be refused. One such circumstance which is contained in Section 41(h) is extracted below.

Section 41(h):

When equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust.

The revision petitioners contend that a suit for Specific Performance is equally an efficacious remedy but that is not sought for and therefore injunction cannot be granted and therefore the plaint shall be rejected. This contention cannot be countenanced.

11. A rejection of the plaint under Order VII Rule 11(d) is permissible where the suit appears from the statement in the plaint to be barred by any law. A suit for perpetual injunction with allegations that the defendants are threatening to invade the rights of the plaintiff is well within the terms of Section 38 of the Specific Relief Act, 1963. Since plaint contains such allegations, the plaint is maintainable. Plaint by itself has not

indicated any bar of law. A principle of law not to grant a remedy in the light of certain circumstances could by itself do not amount to be a legal bar to institute the suit. A plaintiff would be denied of relief of perpetual injunction for his failure to ask for relief of Specific Performance either by terms of Section 41(h) of Specific Relief Act or by any other provision does not stand as a bar to sue. Inability to secure a relief under law is different from ability to sue. In the cited rulings, the plaints were entertained and after due trial, Courts held that the relief of perpetual injunction could not be granted and such conclusions were reached based on facts and principles of law. The observations are that a mere suit for perpetual injunction without any further reliefs cannot be maintained is only referable to final decision of the Court as to whether a plaintiff was entitled for injunction or not and they have not referred to plaintiff's claim for injunction being barred by any statute. Therefore, cited rulings will be helpful for the revision petitioners only during the trial of the suit and these rulings do not furnish a reason under Order VII Rule 11(d) CPC. In this regard one has to notice the principle laid down by the Hon'ble

Supreme Court of India in ***Gurdev Singh V. Harvinder Singh***³.

While considering a plaint and its rejection, it was contended that the plaintiff is not entitled to any relief in the suit and therefore it was argued for rejection of the plaint. Negating that argument, it was held that a plaintiff is not entitled for any relief is no ground to reject the plaint.

12. The impugned order is bereft of adequate reasons. However, conclusions reached by the learned trial Court are correct and in accordance with law. This Court holds that the impugned order has not occasioned any injustice. Therefore, the revision petition has no merit.

In the result, this Civil Revision Petition is dismissed and as a consequence Order dated 18.12.2019 of learned Junior Civil Judge, Mylavaram in I.A.No.697 of 2017 in O.S.No.88 of 2016 stands confirmed. Both parties to the suit shall participate in the trial and the learned trial Court shall dispose of O.S.No.88 of 2016 as expeditiously as possible. There shall be no order as to costs.

³ 2022 LiveLaw (SC) 963

As a sequel, miscellaneous applications pending, if any,
shall stand closed.

//TRUE COPY//

Sd/- N NAGAMMA
ASSISTANT REGISTRAR
SECTION OFFICER

To,

1. The Junior Civil Judge, Mylavaram.
 2. One CC to Sri. Krishna Rao Paritala, Advocate [OPUC]
 3. The Section Officer, V.R Section, High Court of Andhra Pradesh at
Amaravati.[OUT]
 4. Three CD Copies
- VNA

V. Anuradha

HIGH COURT

DATED:25/07/2023

ORDER

CRP.No.478 of 2020

6 copies

V.A

21/11/23.



DISMISSING THE CIVIL REVISION PETITION