

APHC010081452023



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3332]

WEDNESDAY, THE TWENTY SECOND DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE RAVI CHEEMALAPATI

CIVIL REVISION PETITION NO: 589/2023

Between:

1. Mallipeddi China Papayya, S/o Venkata Ratnam, Hindu, Aged 63 years, agriculture coolie, R/o Nethaji colony, D.No.21-13-90d, 3rd road, Madhuranagar, Vijayawada- 520 011.

...PETITIONER

AND

1. Mallipeddi Samba Siva Rao, S/o Anjayya, Hindu, aged 73 years, R/o D.No.13.1.378/39, Srinivasa Nagar, Kotappakonda road, Narsaraopet, Guntur district.
2. Vemulapalli Nagamani, W/o Venkateswara Rao, Hindu, Aged 75 Years, R/O Pedalaka Village, Bhattiprolu Mandal, Guntur District.
3. M.Papa rao, (died),
4. V.Naga Bhushanamma, W/o Madhava Prasad, Hindu, A/A 61 Years, R/O Pedalaka Village, Bhattiprolu Mandal, Guntur District.
5. M Ramesh Babu, S/O Late Venkata Ratnam, (Died)
6. Mallipeddi Udaya Lakshmi, W/o Late Papa Rao, Hindu, A/A 68 Years, R/O Pedalaka Village, Bhattiprolu Mandal, Guntur District.
7. Mallipeddi Lakshmi, W/o Late Ramesh Babu, Hindu, A/A 50 Years, R/O Pedalaka Village, Bhattiprolu Mandal, Bapatla District.
8. Tripuraneni Supriya, W/o Surendra, Hindu, A/A 30 Years, R/O Pedalaka Village, Bhattiprolu Mandal, Bapatla District.

9.Korrapati Spandana, W/o Kishore Babu, Hindu, A/A 28 Years, R/O Pedalaka Village, Bhattiprolu Mandal, Bapatla District.

...RESPONDENT(S):

Petition under Article 227 of the Constitution of India, praying that in the circumstances stated in the grounds filed herein, the High Court may be pleased to allow the present Civil Revision Petition and set aside the impound dismissal order dated 30.01.2023 passed in CMA No. 2/2018, on the file of the Honourable XIII Additional District Judge at Narsaraopet, Guntur District, by seeking to set aside the dismissal order passed in I.A.No.303/2017 in O.S.No.209/2016 dated 03.11.2017 on the file of the Principal Junior Civil Judge at Narsaraopet, and pass

IA NO: 1 OF 2023

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 Stay all further proceedings in O.S.No.209/2016 on the file of the Honourable Principal Junior Civil Judge at Narsaraopet till the disposal of this civil Revision petition in the interest of Justice and Equity.

IA NO: 2 OF 2023

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 permit to withdraw the CMA.No.589/2023 on the file of this Honourable Court for filing the fresh Civil Revision Petition against the orders passed by the Honourable Principal Junior Civil Judge Court, Narasaraopet in IA.No.303/2017 in OS.No.209/2016 dated 03-11-2017, for which the Honourable High Court may be pleased to pass

Counsel for the Petitioner:

1.K RAMA KOTESWARA RAO

Counsel for the Respondent(S):

1.G V S MEHAR KUMAR

The Court made the following order:

The present Civil Revision Petition is filed by the petitioner being aggrieved by orders dated 30.01.2023 passed in CMA.No.2/2018 on the file of the Court of learned XIII Addl. District Judge, Narasaraopet, confirming the orders passed in I.A.No.303/2017 in O.S.No.209/2016 dated 03.11.2017.

2. The facts that led to filing of this civil revision petition are that:

The petitioner is the 1st defendant, 1st respondent is the plaintiff and the respondent nos.2 to 9 are the co-defendants in the suit vide O.S.No.209/2016 filed for specific performance of agreement of sale. In the said suit, petitioner/1st defendant filed I.A.No.303/2017 under Order 7 Rule 11(a), (b) and (d) praying the court to reject the plaint on the grounds that the suit is barred by limitation, that the cause of action is not disclosed and that no notice was issued to the parties before filing the suit. The plaintiff/1st respondent opposed the said application by filing counter duly contending that suit is not barred by limitation and the issue of limitation has to be decided by the court after completion of trial and the plaint cannot be rejected as the cause of action is disclosed. After hearing both the parties, the court below has dismissed the said application under its order dated 03.11.2017. Assailing the said order, the petitioner filed CMA.No.2 of 2018 before the learned XIII Addl. District Judge, Narasaraopet, and the appeal also got dismissed with costs confirming the orders passed in I.A.No.303/2017 dated 03.11.2017. Aggrieved by the said orders, the present revision petition is filed.

3. Heard Sri K.Rama Koteswara Rao, learned counsel for the petitioner and Sri GVS Mehar Kumar, learned counsel for the 1st respondent.

4. Learned counsel for the petitioner in elaboration to what has been raised in the grounds of revision and the contents of the affidavit filed before the court below contended that, the plaint ex-facie shows that it has no cause of action and that it is barred by limitation and the plaintiff's case falls within the parameters of Order VII Rule 11 (a) & (d). He further submitted that, despite raising those grounds vide I.A.No.303/2017 and CMA.No.2 of 2018, the court below and the appellate court have erroneously dismissed the petition and appeal. In support of his contentions, learned counsel for the petitioner relied on the judgment of the Apex Court in ***Karam Singh Vs Amarjit Singh & others***¹ and accordingly prayed to allow the revision.

5. Learned counsel for the 1st respondent submitted that, the question of limitation cannot be decided at the threshold just by looking into the plaint and it has to be dealt after completion of trial as it involves mixed question of fact and law and also the plaint discloses cause of action, as such the plaintiff's case does not fall within the parameters of Order VII Rule 11. He further submitted that, though there is no appeal provision before the appellate court, the petitioner has filed appeal vide CMA.No.2 of 2018 wherein it was rightly held that the appellate court has no jurisdiction, however confirmed the orders of the trial court passed in I.A.No.303/2017. He further submitted that the judgment

¹ 2026 (1) ALD 44 (SC)

relied by the learned counsel for the petitioner is not applicable to the facts of this case, as such prayed to dismiss the revision.

6. Perused the record and considered the submissions of both the learned counsel.

7. Order VII Rule 11 of the CPC, 1908 mandates the rejection of a plaint at any stage if it lacks a cause of action, is undervalued, is insufficiently stamped, is barred by law, or fails to comply with procedural rules. It acts as a threshold barrier to prevent frivolous, vexatious, or legally flawed litigation. In ***K.N.Reddy Vs Defence Personnel Co-op. Housing Building society Limited, Secundrabad***², it was held that once, the plaint discloses description and the cause of action in relation to the suit claim, Courts will not embark upon roving enquiry on these aspects while considering even in an application by the defendants for rejection of the plaint.

8. The main grounds raised by the petitioner are that there is no cause of action for filing the suit and that the suit is barred by limitation. On a bare reading of the plaint, it can be seen that, there is cause of action for filing the suit. At the preliminary stage, the averments made in the plaint must be taken at their face and assumed to be true. Once the date of knowledge is specifically pleaded and forms the basis of the cause of action, the issue of limitation cannot be decided summarily. It becomes a mixed question of law and fact, which cannot be adjudicated at the threshold stage under Order VII

² (2014) 6 ALD 218

Rule 11 CPC. Therefore, rejection of the plaint on the ground of limitation without permitting the parties to lead evidence, is legally unsustainable. In so far as stamp duty is concerned, the deficiency in valuation or court fee does not, by itself render the suit non-maintainable at the threshold. It is a defect which is capable of being remedied and the law expressly provides a mechanism for such rectification.

9. In light of the above, the grounds that are raised by the petitioner for rejection of plaint are not available to the petitioner anymore and the case of the petitioner does not fall within the parameters of Order VII Rule 11 CPC. Therefore, this court is of the opinion that, the court below and the appellate court have rightly dismissed the petitioner's case and that the same needs no interference of this court.

Accordingly, the civil revision petition is ***dismissed***. No costs.

Miscellaneous applications, pending if any, shall stand closed.

BRS

JUSTICE RAVI CHEEMALAPATI