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APHC010566492024



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

[3333]

SATURDAY, THE TWENTY SECOND DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SMT JUSTICE V.SUJATHA

CIVIL REVISION PETITION NO: 3128/2024

Between:

- 1.SUNKARA KAMALAVATHI, W/O. NARAYANA RAO, HINDU AGED ABOUT 63 YEARS, HOMEMAKER, R/O. RANGAPURAM VILLAGE, REDDYGUDEM MANDAL, KRISHNA (NTR) DISTRICT
- 2.BOLLA LEELA MUKTHABAI,, W/O. PRAKASH RAO, HINDU AGED ABOUT 55 YEARS. HOME MAKER, R/O. RAJOLU, ROJULU MANDAL, EAST GODAVARI DISTRICT.

...PETITIONER(S)

AND

- 1.CHEBROLU SAMBA SIVA RAO, S/O. VENKATESWARA RAO, HINDU AGED ABOUT 49 YEARS. BUSINESS, R/O. REDDIKUNTA VILLAGE, H/O. RANGAPURAM, REDDYGUDDDEM MANDAL, KRISHNA (NTR) DISTRICT.
- 2.CHEBROLU RAJU, S/O. VENKATESWARA RAO, HINDU, AGED ABOUT 47 YEARS. AGRICULTURIST, R/O. REDDIKUNTA VILLAGE, H/O. RANGAPURAM, REDDYGUDDDEM MANDAL, KRISHNA (NTR) DISTRICT.
- 3.GANDRA SANKARA REDDY, S/O. LATE JAMALA REDDY, HINDU,

AGED ABOUT 46 YEARS. AGRICULTURIST, R/O. RANGAPURAM
VILLAGE REDDYGUDEM MANDAL, NTR 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 toMemorandum of Civil Revision Petition against the Order dated 14.10.2024, passed in I.A. No. 2 of 2024 in O.S.No. 73 of 2024, on the file of the Court of the Junior Civil Judge, Mylavaram, Krishna (NTR) District

IA NO: 1 OF 2024

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 of all further proceedings in O.S. No. 73 of 2024, on the file of the Court of the Hon'ble Junior Civil Judge, Mylavaram and pass

IA NO: 1 OF 2025

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 may be pleased to EXPEDITE the hearing of the CRP No. 3128 of 2024 by fixing an early date and pasS

Counsel for the Petitioner(S):

1.G SUNDARESAN

Counsel for the Respondent(S):

1.P GANGA RAMI REDDY

The Court made the following:

ORDER:

This Civil Revision Petition is filed by the petitioners/defendant Nos.1 and 2 challenging the order dated 14.10.2024 passed in I.A.No.2 of 2024 in O.S.No.73 of 2024 on the file of Court of the Junior Civil Judge, Mylavaram, Krishna (NTR) district whereby the application filed by the petitioners/defendant Nos.1 and 2 under Order VII Rule 11(a) and (d) of the Code of Civil Procedure was dismissed.

2. For the sake of convenience, the parties to the revision will hereinafter be referred as petitioners and respondents, as arrayed before the Trial Court in I.A.No.2 of 2024.

3. Brief facts of the case are as follows:

(a) The respondent Nos.1 and 2 filed O.S.No.134 of 2006 on the file of the Court of the Senior Civil Judge, Nuzvidu, seeking permanent injunction, restraining the petitioners and few other defendants in the said suit, from interfering with their peaceful possession and enjoyment of the suit schedule property. In the said suit, the petitioners are arrayed as defendant Nos.1 and 2, the late father of the petitioners was arrayed as defendant No.3 and few third parties as defendant Nos.4 to 7. The Court below, having observed that the petitioners herein have put forth relevant material to prove that the

respondents have no title over the plaint schedule property, dismissed the suit filed by the respondents, on 27.08.2010.

(b) The said judgment was challenged by the respondents before the learned XV Additional District and Sessions Judge, Nuzvid by way of an appeal suit in A.S.No.65 of 2013 wherein, the learned District Judge confirmed the judgment passed by the trial Court (vide judgment dated 16.11.2017) by observing that the petitioners were able to show better title to prove their settled possession and that the respondents herein failed to disclose their settled possession over the suit schedule property.

(c) Aggrieved by the judgment passed by the learned District Judge on 16.11.2017, the respondents preferred a second appeal before this Court i.e. S.A.No.365 of 2018 wherein this Court has upheld the judgments passed by the Courts below, vide order dated 16.11.2023. Thereafter, the respondents have again filed a suit for declaration of title and consequential relief of permanent injunction on the file of the Court of the Junior Civil Judge, Mylavaram in O.S.No.73 of 2024. In the said suit, the petitioners herein filed an application under Order VII Rule 11 (a) and (d) of the Code of Civil procedure requesting the Court to reject the plaint for want of cause of action and on the ground that it is barred by limitation. The Court below, after considering the rival contentions of both the parties, passed the impugned

order dated 14.10.2024 dismissing the application filed by the petitioners aggrieved by which, the petitioners filed this civil revision petition.

4. Heard Sri. Y. Srinivas Murthy, learned Senior Counsel representing Sri. G. Sundaresan, learned counsel for the petitioners; Sri. Narsi Reddy, learned counsel appearing on behalf of Sri. Ganga Rami Reddy, learned Counsel for the respondents.

5. During the course of arguments, learned Senior Counsel appearing for the petitioners reiterated the facts that led to filing of the subject suit on the file of the Court of the Junior Civil Judge, Mylavaram, Krishna (NTR) district and has contended that there is no cause of action for filing the present suit as the document on which the respondents are relying to contest the suit does not disclose their legal right. He further submitted that the subject suit is barred by limitation and is not maintainable and thus, the respondents deployed a method of clever drafting of plaint and created an illusory cause of action by avoiding to mention about the period of limitation for filing the subject suit. As such, the petitioners filed an application before the Court below under Order VII Rule 11 (a) and (d).

6. Learned Senior Counsel further contended that the power under the said Rule can be exercised by the Court at any stage of the suit and that the averments of the plaint alone should be looked into for deciding such application. He submitted that the Court shall read the averments of the plaint

as a whole to find out whether such averments disclose a cause of action or whether the suit is barred by any law. He contended that, the respondents, with a view to get out of the law of limitation and to bring the suit within the period of limitation, made such vogue averments without there being any specific pleadings and averments in the plaint on limitation. The subject suit is manifestly vexatious and is filed in gross abuse of process of law, without there being any merit or disclosure of a right to sue. Learned Senior Counsel, while relying upon judgments of the Hon'ble Supreme Court of India in ***Ramchandra Dagdu Sonavane (dead) and Ors. Vs. Vithu Hira Mahar (dead) and Ors.***¹, ***Ram Prakash Gupta Vs. Rajiv Kumar Gupta and Ors.***², ***Canara bank Vs. P. Selathal and Ors.***³, requested this Court set-aside the order dated 14.10.2024 passed by the Court below and to reject the plaint filed by the respondents.

7. On the other hand, learned counsel appearing for the respondents submitted that the cause of action arose on 20.05.1960 when one Kancharla Chinna Satyanarayana Murthy and 25 others purchased a large extent of land admeasuring Acs.748.71 cents situated at Rangapuram and Reddigudem villages which includes the land admeasuring Acs.9.94 cents in R.S.No.462 of Rangapuram village. In the year 1965, two groups orally partitioned the land to an extent of Acs.9.94 cents purchased by them and in the said process, the

¹ (2009) 10 SCC 273

² (2007) 10 SCC 59

³ (2020) 13 SCC 143

land to an extent of Acs.4.96 cents in R.S.No.462 of Rangapuram which is on the western side of the total extent, was further partitioned by 13 persons, upon which one Kancharla Chinna Satya Narayana Murthy and Gade Subramanyeswara Rao secured a land to an extent of Acs.1.98 cents each and one Maddali Bapayamma secured Acs.1.00 cents as her share. Subsequently, Kancharla Chinna Satya Narayana Murthy acquired the remaining extent of lands i.e. Acs.1.98 cents from Gade Subramanyeswara Rao and Acs.1.00 cents from Maddali Bapayamma. Thus, Kancharla Chinna Satya Narayana Murthy and his three brothers became owners of the plaint schedule property. Thereafter, the legal heirs of Kancharla Chinna Satya Narayana Murthy inturn executed a registered sale deed in favour of the respondent on 09.10.2006. As the petitioners started interfering with the possession of the respondents from 14.11.2006, the respondents filed O.S.No.134 of 2006 on the file of the Court of the Senior Civil Judge, Nuzvid which was dismissed on 27.08.2010 on the ground that the suit for injunction is not maintainable when there is a cloud casted upon the title of the respondents. The said judgment was confirmed in A.S.No.65 of 2013 by the learned XV Additional District and Sessions Judge, Nuzvid and also by this Court in S.A.No.365 of 2018. The learned District Judge and as well as this Court observed that the respondents ought to have filed a suit for declaration of title instead of a suit for injunction. Hence, the subject suit is filed by the respondents seeking declaration of the title of the suit schedule property and

the same cannot be rejected at threshold where question of limitation is a mixed question of fact and law, without conducting the trial the same cannot be decided. He further contended that the Court below, after taking into consideration all the factual aspects dismissed the application filed by the petitioners and that the same need not be interfered by this Court. Hence requested to dismiss this civil revision petition.

8. Perused the entire material available on record.

9. It is the contention of the respondents that the cause of action arose on 20.05.1960 when Kancharla Chinna Satyanarayana Murthy and others purchased the land admeasuring Acs.748.71 cents of land, including Acs.9.94 cents in R.S.No.462 of Rangapuram village. In the year 1965, the land to an extent of Acs.9.94 cents was orally partitioned, and the western part of the said land to an extent of Acs.4.96 cents was fell in the share of Kancharla Chinna Satyanarayana Murthy, Gade Subramanyeswara Rao, and Maddali Bapayamma (to an extent of Acs.1.98, Acs.1.98, and Acs.1.00 each respectively). Subsequently, Kancharla Chinna Satyanarayana Murthy acquired the shares of Gade Subramanyeswara Rao, and Maddali Bapayamma. In January 2005, the respondents took possession from the legal heirs of Kancharla Chinna Satyanarayana Murthy and obtained a registered sale deed on 09.10.2006. Relying on the said sale deed dated

09.10.2006, the respondents have contested in the original suit, appeal suit and the second appeal.

10. On the other hand, the petitioners contend that initially, one Garapati Krishna Murthy is the absolute owner and possessor of the land admeasuring Acs.5.00 cents in R.S.No.462 of Rangapuram village having purchased the same in the year 1960 by way of a registered sale deed dated 20.05.1960. In the year 2005, by way of two individual registered gift deeds dated 29.06.2005, an extent of Acs.2.50 cents of dry land was registered in favour of the 1st petitioner and the remaining extent of Acs.2.50 cents in R.S.No.462 was registered in favour of the 2nd petitioner, by the said Garapati Krishna Murthy. As such, it is the case of the petitioners that there is no cause of action for the plaintiffs to file the present suit and that the same was filed without there being any specific pleadings and averments in the plaint on limitation.

11. As the petitioners filed the subject application before the Court below under Order VII Rule 11 (a) and (d) of the Code of Civil Procedure, the same is extracted hereunder for better appreciation of the case:

“27. Order 7 Rule 11 of the CPC reads as follows :

11. Rejection of plaint.-- The plaint shall be rejected in the following cases:--

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the plaintiff is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate];

(f) where the plaintiff fails to comply with the provisions of Rule 9.”

12. A perusal of the aforesaid provision would make it clear that a plaint is liable for rejection, if the suit is barred by any law or where it does not disclose a cause of action. In ***United Insurance Co. v. C. R. Ramanatham***⁴, this Court in paragraph 10 observed as under:

“Under Order VII Rule 11 (d) a plaint must be rejected only if the averments therein explicitly disclose that the suit was barred by the provisions of any law, but not otherwise. The Court had no power to throw out the suit by rejecting the plaint at the threshold stage by examining and interpreting the provisions of law on which the suit is found. Neither the express language of clause (d) of Rule 11 nor its intendment clothes the Court with such a power. The words “where the suit appears to be barred by any law” are qualified by “the statement in the plaint”. What is explicitly mentioned in the plaint, therefore, must alone be the basis for the exercise of power under Order VII Rule 11 (d), but not the conclusions that may be interpretatively drawn on an examination of the statutory provisions alluded to in the plaint. Where there was no such explicit statement in the plaint the question whether there was any legal barricade to the suit must be tried as an issue at the appropriate stage and that by this procedure alone the interests of both the parties to the suit could be safeguarded.”

⁴ (1989) 1 ALT 190

13. The said legal principle was also reiterated in ***Saleem Bhai Vs. State of Maharashtra***⁵, wherein it is held as under:

“9....the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power ... at any stage of the suit - before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under Clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage,...”

14. In “***Shri Mukund Bhavan Trust and Ors. Vs. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and Ors.***”⁶ the Hon’ble Supreme Court while dealing with the issue as to rejection of plaint on the ground of limitation held as follows:

“At this juncture, we wish to observe that we are not unmindful of the position of law that limitation is a mixed question of fact and law and the question of rejecting the plaint on that score has to be decided after weighing the evidence on record. However, in cases like this, where it is glaring from the plaint averments that the suit is hopelessly barred by limitation, the Courts should not be hesitant in granting the relief and drive the parties back to the trial Court. We again place it on record that this is not a case where any forgery or fabrication is committed which had recently come to the knowledge of the Plaintiff. Rather, the Plaintiff and his predecessors did not take any steps to assert their title and rights in time. The alleged cause of action is also

⁵ (2003) 1 SCC 557

⁶ 2025 (2) ALD 246 (SC)

found to be creation of fiction. However, the trial Court erroneously dismissed the application filed by the Appellants Under Order VII Rule 11(d) of Code of Civil Procedure. The High Court also erred in affirming the same, keeping the question of limitation open to be considered by the trial Court after considering the evidence along with other issues, without deciding the core issue on the basis of the averments made by the Respondent No. 1 in the Plaint as mandated by Order VII Rule 11(d) of Code of Civil Procedure. The spirit and intention of Order VII Rule 11(d) of Code of Civil Procedure is only for the Courts to nip at its bud when any litigation ex facie appears to be a clear abuse of process. The Courts by being reluctant only cause more harm to the Defendants by forcing them to undergo the ordeal of leading evidence. Therefore, we hold that the plaint is liable to be rejected at the threshold.

15. Admittedly, in an application filed under Order VII Rule 11 of the Code of Civil procedure, the relevant facts which need to be looked into for deciding the said application are the averments of the plaint alone and the question of examining and interpreting the provisions of law on which the suit is filed should not be looked into. Though the contentions leveled in the plaint are prima facie taken to be correct as a whole, if it is shown that the suit itself is barred by any law or does not disclose any cause of action, the application filed under Order VII Rule 11 of the Code of Civil procedure can be entertained and the power vested under the said rule can be exercised.

16. On a perusal of the impugned order passed by the Court below, it can be seen that, basing on the averments made in the plaint by the respondents, the Court below came to a conclusion that the admissibility of the suit document could be decided after full-fledged trial. Even if the averments set out in the plaint are assumed to be true in their entirety, the suit filed by the respondents is clearly barred by limitation. The respondents filed the subject suit i.e. O.S.No.73 of 2024 on the file of Court of the Junior Civil Judge, Mylavaram seeking declaration of title of the schedule property relying on the registered sale deeds dated 09.10.2006, which is the very same document relied on by the respondents in the earlier suit i.e. O.S.No.134 of 2006 on the file of the Court of the Senior Civil Judge, Nuzvidu, which was filed seeking permanent injunction against the petitioners herein. The latter suit was dismissed by the Court below which was confirmed in the appeal suit and as well as in the second appeal preferred by the respondents on the ground that the petitioners herein succeeded in proving better title of the schedule property and that the respondents herein failed to disclose the settled possession over the suit schedule property. Relying on the very same documents that have already been disbelieved by the Courts earlier, the respondents have now filed the present suit for declaration of title though the issue with regard to its genuineness was already determined. Time and again, the Hon'ble Supreme Court held that a plea decided in a suit for injunction touching the title between the same parties, would operate as res judicata. In

Ramchandra Dagdu Sonavane (dead) and Ors. Vs. Vithu Hira Mahar (dead) and Ors. (1 Supra), the Apex Court referred to its judgment in **Sulochana Amma Vs. Narayanan Nair**⁷, wherein it was held as under:

“It is settled law that in a suit for injunction when title is in issue for the purpose of granting injunction, the issue directly and substantially arises in that suit between the parties. When the same issue is put in issue in a later suit based on the title between the same parties or their privies in a subsequent suit, the decree in the injunction suit equally operates as res judicata.”

17. As per Article 58 of Schedule I of Limitation Act, the suit has to be filed within 3 years, which ended in 2009. Therefore, the limitation for filing the suit starts from the year 2006 and ends in the year 2009 as per Article 58 and 59 of the Limitation Act. Therefore, the suit filed in the year 2024 is clearly barred by limitation. In **Canara bank Vs. P. Selathal and Ors.** (3rd supra), the Apex Court, while referring to its judgment in **Ram Singh Vs. Gram Panchayat Mehal Kalan**⁸, held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting to avoid those circumstances, by which the suit is barred by limitation. If the respondents want to get a declaration of title of the suit schedule property, they ought to have filed the suit seeking the said relief within three years from the date of the sale deed, but in the present case, admittedly the plaintiff filed the suit in the year 2024.

⁷ (1994) 2 SCC 14

⁸ (1986) 4 SCC 364

18. The ground on which the respondents contend that the suit is not barred by limitation is that, due to the pendency of the appeal suit and the subsequent second appeal initiated by them, they could not file the present suit earlier. The said contention cannot be accepted. Admittedly, the learned Senior Civil Judge, Nuzvidu in O.S.No.134 of 2006 vide judgment dated 27.08.2010, the learned XV Additional District and Sessions Judge, Nuzvid in the judgment dated 16.11.2017 in appeal suit (A.S.No.65 of 2013) and this Court in the second appeal (S.A.No.365 of 2018) filed by the respondents observed that the respondents ought to have filed a suit for declaration of title instead of a suit for injunction. In view of the observation made by the Courts in the earlier proceedings, the respondents ought to have filed a suit for declaration immediately, but not after dismissal of the second appeal; by taking advantage of the said observation, the respondents cannot file the present suit and contend that the same is not barred by limitation. This Court is of the opinion that the appeal suit and the second appeal did not, in any manner, preclude the respondents from seeking appropriate amendments therein. Failing to do so, it cannot be used now as a shield to overcome the bar of limitation. Even as per the law laid down by the Hon'ble Supreme Court in ***Shri Mukund Bhavan Trust and Ors. Vs. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and Ors*** (6th supra) the plaint must be rejected at threshold without proceeding to trial when it is evident from plaint that the suit is hopelessly barred by limitation, even though the issue of

limitation is a mixed question of fact and law. Allowing such suits to proceed would be an abuse of judicial process and would unnecessarily burden the defendants.

19. Article 227 deals with power of superintendence by the High Court over all Subordinate Court and Tribunals. The power of superintendence conferred upon the High Court by Article 227 is not confined to administrative superintendence only, but includes the power of judicial revision also even where no appeal or revision lies to the High Court under the ordinary law, rather power under this Article is wider than that of Article 226 in the sense that it is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction and such power can also be exercised suo motu.

20. It is a well settled principle that the High Court can exercise supervisory power over the subordinate Courts under Article 227 of Constitution of India, as held by the Apex Court in “**State (N.C.T. Of Delhi) Vs. Navjot Sandhu@Afsan Guru**”.

21. As per the law laid down by the Hon’ble Apex Court, supervisory jurisdiction under Article 227 of the Constitution is to be exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though

available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

22. In view of my foregoing discussion, I find that the order of the trial Court is erroneous and is liable to be set aside by exercising power under Article 227 of the Constitution of India.

23. Accordingly, this civil revision petition is allowed and the order dated 14.10.2024 passed by the learned Junior Civil Judge, Mylavaram, Krishna (NTR) district in I.A.No.2 of 2024 in O.S.No.73 of 2024 is set-aside and the matter is remanded to the trial Court for disposal of the said I.A.No.2 of 2024 in O.S.No.73 of 2024 afresh in view of the observations made supra. No costs.

Consequently, miscellaneous applications, pending, if any, shall also stand closed.

JUSTICE V. SUJATHA

Date:22.11.2025

Gss