

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JUNE, 2023

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

CIVIL REVISION PETITION NO.250/2022 (IO)



BETWEEN:

1 . SMT. N. VARALAKSHMI
W/O LATE V. NEHRU REDDY @ V.NARAYANA
AGED ABOUT 68 YEARS
R/AT NO.22, DODDAKATAPPA
ROAD, HALASURU
BENGLAURU-560 008. ... PETITIONER

(BY SRI JANARDHANA G, ADVOCATE)

AND:

1 . SRI V.R. SHIVANANDA MURTHY
S/O LATE B.RUDRAIAH
AGED ABOUT 59 YEARS
RESIDING AT NO.4
5TH CROSS, 2ND MAIN
PATTEGARAPALYA
S.V.G. NAGAR
VIJAYNAGAR NORTH
BENGALURU-560 072.

2 . SMT.N.SAVITHA
W/O LATE C.P.CHANDRASHEKAR REDDY
AGED ABOUT 64 YEARS
RESIDING AT NO.3/1
SUBBAIAH REDDY ROAD
HALASURU, BENGALURU-560 008.

3 . SRI. SURESH
S/O LATE B.NANJAPPA
AGED ABOUT 62 YEARS,

4 . SRI. S.KARTHIK
S/O SURESH
AGED ABOUT 31 YEARS,

RESPONDENT NOS.3 AND 4
ARE RESIDING AT NO.855
3RD CROSS, 11TH MAIN
HAL II STAGE, INDIRANAGAR
BENGALURU-560 038.

NOW CHANGED TO NO.642/A
16TH MAIN ROAD
NEW MICO LAYOUT
HONGASANDRA
BEGUR ROAD
BENGALURU-560 068.

... RESPONDENTS

(BY SRI K.SUMAN, SENIOR COUNSEL FOR
SRI K.SIDDHARTH SUMAN, ADVOCATE FOR R1 [THROUGH VC]
SRI V.PRABHAKAR, ADVOCATE FOR R2;
R3 & R4 ARE SERVED & UNREPRESENTED)

THIS CRP IS FILED UNDER SECTION 115 OF CPC,
AGAINST THE ORDER DATED 02.06.2022 PASSED ON I.A.II IN
OS.NO.671/2020 ON THE FILE OF THE XXVIII ADDL. CITY CIVL
JUDGE, MAYO HALL, BANGALORE DISMISSING I.A.II FILED
UNDER ORDER VII RULE 11(d) R/W SECTION 151 OF CPC.

THIS CRP HAVING BEEN HEARD AND RESERVED FOR
ORDERS ON 15.06.2023 THIS DAY, THE COURT PRONOUNCED
THE FOLLOWING:

ORDER

This revision petition is filed challenging the rejection order dated 02.06.2022 on I.A.No.2 filed under Order VII Rule 11(d) read with Section 151 of CPC passed in O.S.No.671/2020 on the file of XXVIII Addl. City Civil Judge, Mayo Hall Unit, Bengaluru.

2. The factual matrix of the case of the plaintiff before the Trial Court is that the plaintiff/respondent No.1 herein has filed a suit for the relief of declaration to declare that the plaintiff is the absolute owner in lawful possession and enjoyment of the suit schedule property and to declare that the preliminary decree passed by this Court in R.F.A.No.2331/2007 dated 14.07.2017 and the order and draft final decree drawn by the XXVIII Addl. City Civil Judge, Mayo Hall Unit (CCH-29), Bengaluru, dated 06.02.2019 in FDP No.25017/2017 is not binding on the plaintiff or affecting the suit schedule property and also consequential relief of permanent injunction.

3. Defendant Nos.1 and 2, have filed an application under Order VII Rule 11(d) read with Section 151 of CPC and

under Order VII Rule 11(a) to (e) read with Section 151 of CPC, respectively, the same came to be dismissed with costs of Rs.1,000/- each. Defendant No.2 has not filed any revision petition. But, defendant No.1 has filed the present revision petition before this Court. Hence, this Court has to take note of the averments made in the application filed by defendant No.1 and he had invoked only Order VII Rule 11(d) read with Section 151 of CPC, wherein, prayed the Court to reject the plaint as barred by law. In support of this application, an affidavit was sworn to by defendant No.1, wherein, it is her claim that she has filed a suit for partition in O.S.No.10024/1998 against the defendant's vendors, wherein they have undertaken not to alienate the same as per the undertaking given to the Trial Court on 30.05.1998. The said suit was partly decreed on 31.07.2007 and against which, she has preferred an appeal before this Court in R.F.A.No.2331/2007 and the same was allowed on 14.07.2017 granting 1/4th share to her in the suit schedule property and the property bearing No.56/1 and accordingly, she has filed FDP No.25017/2017 and the Court has appointed a Court Commissioner to divide the same after hearing the objections

from all the parties. Accordingly, northern side of the suit schedule property measuring 425 sq.ft. fallen to her share and she has taken the possession of the same through the Court by filing Execution Petition No.25141/2019 on 26.04.2019 and she is the judgment debtor No.3 in the said case. After taking possession of the same, the second defendant has also taken southern portion of the suit schedule property from the plaintiff and on the same day, the plaintiff has entered into rental agreement with her for the said portion a tenancy month starting from 01.05.2019 and accordingly, he has paid the advance amount of Rs.3 Lakhs and the balance payable is Rs.2 Lakhs out of Rs.5 lakhs and monthly rent payable is Rs.30,000/- and accordingly, he has been paying the monthly rent in cash. Since he has accepted her as his landlord and entered into the rental agreement, it is not open for him to deny her title. That apart, whatever alleged transaction taken place between him and his vendors the pending proceedings is subject to the result of the suit. Hence, the Sale Deed has no validity in the eye of law and he is not entitled to get any relief in the suit. The plaintiff cannot re-agitate his right and the proceedings are binding on him since

he has purchased the property during the pendency of R.F.A., and also there was a decree passed by the Trial Court. Hence, contended that the plaint is barred by law.

4. This application was resisted by filing objection statement contending that while invoking Order VII Rule 11 of CPC, the Court has to look into the plaint averments and the plaint clearly discloses that the plaint is not barred by any law and also it is a settled law that only plaint averments has to be looked into. When the averments made in the plaint clearly establishes that the same is not barred by any law as claimed by the defendants and defendant No.1 was not the party in O.S. as well as the R.F.A. and orders are obtained behind the back of the plaintiff. Defendant Nos.1 and 2 or the third defendant have not brought the fact to the notice of this Court or the City Civil Court that the plaintiff is the absolute owner in lawful possession and enjoyment of the suit schedule property. Hence, the judgment and decree is not binding or affecting the plaintiff. It is also contended that the very defendant has contended that the plaintiff has accepted defendant No.1 as landlord and the same

is denied. No such rental agreement and the same is bogus, concocted and fabricated. Hence, Order VII Rule 11 of CPC cannot be dismissed on the threshold and prayed the Court to dismiss the same.

5. The Trial Court having considered both the applications filed by defendant No.1 and defendant No.2, came to the conclusion that the defendant No.1 in the affidavit not stated under which law the suit is barred by law and no specific pleading in the application. The observation is made that looking at the provision of Order VII Rule 11 of CPC, which indicates that the plaint can be rejected only under certain circumstances. Defendant No.1 has not specifically pleaded under which law the suit is barred by law. The applications are silent as to under which the law the suit is barred. Apart from that, even in the oral submission also the defendants failed to highlight which is the law bars this suit. With regard to the other ground raised by defendant No.2 came to the conclusion that it is the settled principle of law that the valuation made and Court Fee paid is the mixed question of law and fact cannot be considered as a

preliminary issue. Hence, rejected the same and the present revision petition is filed by defendant No.1.

6. The main contention of the learned counsel appearing for the petitioner is that the Trial Court has committed an error in rejecting the application even though it indicates that the suit is liable to be dismissed as barred under law, but unfortunately both applications are rejected. It is contended in paragraph No.3 of the affidavit clearly explained how the suit is barred by law, even though in the affidavit at paragraph No.2, she has clearly stated that the sale deed on which he has relied upon to claim the declaration has no validity in the eye of law, since he has purchased the suit schedule property when R.F.A.No.2331/2007 was pending before this Court and it is subject to result of the said suit and the said suit has been decreed by the Trial Court and modified by this Court in granting 1/4th share to the petitioner and accordingly the final decree proceedings was drawn and in execution proceedings to the extent of 425 sq.ft. of the suit schedule property had come to her share and hence he cannot have any claim over the same.

The learned counsel also would vehemently contend that even though in paragraph No.2 of the affidavit, supporting the application clearly stated that in the said suit an undertaking given by respondent No.3 and their another brother Mahendra was recorded by the Trial Court that they will not alienate the same till disposal of the suit and contrary to the said transaction, it has been sold to the first respondent and hence it has no validity in the eye of law and in spite of the same, the trial Judge erred in holding that in the application for rejection of the plaint, it has not indicated under what law the suit has been barred by law. The learned counsel also would vehemently contend that the sale transaction of respondent No.1 hit by Section 52 of the Transfer of Property Act, since the said transaction was subject to the result of the above proceedings. When such being the case, the learned counsel would submit that the Trial Court ought to have rejected the same. It is also contended that even though it is brought to the notice of the Trial Court that the first respondent – plaintiff has accepted as a landlord and entered into the rental agreement and paid an advance amount of Rs.3,00,000/- and balance of Rs.2,00,000/- has to be paid by

him and he is paying monthly rent of Rs.30,000/-. Hence, he cannot deny the landlord's title by filing a suit for declaration. All these aspects have not been considered by the Trial Court and committed an error.

7. The learned counsel appearing for the petitioner in support of his arguments, he relied upon the judgment of the Apex Court in the case of **Sarvinder Singh v. Dalip Singh and others** reported in **(1996) 5 SCC 539**, and brought to the notice of this Court that paragraph No.6, wherein, discussed with regard to Section 52 of the Transfer of Property Act, wherein, discussed with regard to be clear that the defendants in the suit were prohibited by operation of Section 52 to deal with the property and could not transfer or otherwise deal with it in any way affecting the rights of the appellant except with the order or authority of the Court. Admittedly, the authority or order of the Court had not been obtained for alienation of those properties. Therefore, the alienation obviously would be hit by doctrine of lis pendens by operation of Section 52. Under these circumstances,

the respondents cannot be considered to be either necessary or proper parties to the suit.

8. The learned counsel also relied upon the judgment of the Apex Court in the case of **Guruswamy Nadar v. P. Lakshmi Ammal (dead) through legal representatives and others** reported in **(2008) 5 SCC 796**, in paragraph No.13, the Apex Court held that, Normally, as a public policy once a suit has been filed pertaining to any subject-matter of the property, in order to put an end to such kind of litigation, the principle of lis pendens has been evolved so that the litigation may finally terminate without intervention of a third party. This is because of public policy otherwise no litigation will come to an end. Therefore, in order to discourage that same subject-matter of property, being subjected to subsequent sale to a third person, this kind of transaction is to be checked. Otherwise, litigation will never come to an end. Further, held that, in the present case the principle of lis pendens will be applicable as the second sale has taken place after the filing of the suit. Therefore, the view taken by the Division Bench of the High Court is correct and we do not

find any merit in this appeal and the same is accordingly dismissed with no order as to costs.

9. The learned counsel also relied upon the judgment of this Court in the case of **Smt. Maliamma and others v. Shri Mallegowda @ Karigowda and others** reported in **ILR 2022 KAR 992**, and vehemently contend that this Court referring to paragraph No.9, wherein, the judgments of the Supreme Court are discussed with regard to the scope and ambit as well as the parameters which empowers under Order VII Rule 11 of CPC has to be exercised; taken note of Order VII Rule 11 of CPC i.e., the provisions under Order VII Rule 11(a) to (d) of CPC.

10. The learned counsel also relied upon the judgment of this Court in the case of **Munilakshamma v. Venkatamma** reported in **LAWS(KAR)-2017-7-137**, wherein, discussed in paragraph No.10 with regard to Order VII Rule 11(a) to (d) of CPC and came to the conclusion that there is no valid cause of action in law for the suit and the suit if considered with the basis of cause of action with effect from 20.03.1972, the same is

barred by law of limitation as could be seen from the plaint averments.

11. *Per contra*, the learned counsel appearing for the respondents in his arguments he would vehemently contend that nothing stated in the plaint as regards under what provision suit is barred by law and the same is also observed by the Trial Court and no material is placed before the Court that the suit is barred by law. The learned counsel would vehemently contend that it requires trial. The injunction was only not to alienate and when the specific pleading was made in the plaint regarding cause of action and sought for the relief of declaration, the Court has to look into only the averments of the plaint and not the defense.

12. The learned counsel appearing for the respondents in support of his arguments, he relied upon the judgment of the Apex Court in the case of **P.V. Guru Raj Reddy, represented by GPA Laxmi Narayan Reddy and another v. P. Neeradha Reddy and others** reported in **(2015) 8 SCC 331**, the Apex Court in the judgment held that while exercising of power under Order VII Rule 11 of CPC, only the averments in plaint have to

be read as a whole – Stand of defendants in written statement or in application for rejection of plaint is wholly immaterial at that stage – Plaint can be rejected only if the averments made therein ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law. The learned counsel brought to the notice of this Court that paragraph No.5, wherein, the Apex Court discussed under Order VII Rule 11 of CPC and held that, it is the averments in the plaint that have 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 of CPC, the stand of the defendants in the written statement or in the application for rejection of the plant 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.

13. The learned counsel also relied upon the judgment of the Apex Court in the case of **Mayar (H.K.) Ltd., and others v.**

Owners & Parties, Vessel M.V. Fortune Express and others reported in **(2006) 3 SCC 100**, and brought to the notice of this Court that paragraph No.12, wherein, discussed with regard to Order VII Rule 11 of CPC, having discussed the same came to the conclusion that so long as the plaint discloses some cause of action which requires determination by the Court, the mere fact that in the opinion of the Judge, the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order VII Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants. The learned counsel referring to these judgments would vehemently contend that the Court has to look into only the plaint averments and not the defense.

14. Having heard the respective counsel and the grounds urged in the revision petition as well as the oral submissions, the points that would arise for the consideration of this Court are:

- (1) Whether the Trial Court has committed an error in not allowing the application filed under Order VII Rule 11(d) read with Section 151 of CPC and whether the said order suffers from its legality and correctness?
- (2) What order?

Point No.1:

15. Having heard the respective counsel and also on perusal of the material available on record, particularly, it is settled law that the Court has to look into the contents of the plaint while invoking Order VII Rule 11 of CPC and it cannot look into the defense. Having perused the application invokes Order VII Rule 11(d) read with Section 151 of CPC contending that the plaint may be rejected as barred by law. It is pleaded that in the suit in O.S.No.10024/1998, an undertaking was given by the vendor of the plaintiff, he will not alienate the same and the said undertaking was given on 30.05.1998. It is also important to note that the suit was decreed partly on 31.07.2017 and an appeal was filed. During the pendency of R.F.A, the plaintiff has purchased the suit schedule property. In R.F.A., granted 1/4th

share and consequently FDP was also drawn and the possession was given to the extent of 425 sq.ft in favour of the defendant. It is also the claim of the defendant in the application that the purchase was made during the pendency of the appeal and it attracts Section 52 of the Transfer of Property Act. No doubt, on perusal of the affidavit not stated the very proviso under which the suit is barred. But it is contended that the transaction taken place between the plaintiff and his vendor during the pendency of the proceedings and the same is subject to the result of the suit. Hence, the Sale Deed has no validity in the eye of law and he is not entitled to get any relief in the suit. Hence, the suit is barred by law; the same is also resisted by filing an objection. Hence, the Court has to take note of the material on record, particularly, the plaint. It has to be noted that in the plaint it is stated that he had purchased the property based on the decree obtained by his vendor in O.S.No.363/1997. He contended that he has purchased the same for valuable consideration of Rs.10,43,000/-. It is important to note that the portion of the property which he had purchased was also acquired and he has received the compensation and also admits the transaction

between the plaintiff and defendants and he claims that it was only a loan transaction and not rental agreement. He made the payment of Rs.3 Lakhs in paragraph No.8. On the other hand, it is the contention of the defendant that he had entered into a lease agreement and agreed to pay a rent of Rs.30,000/- per month and also paid the advance amount of Rs.3 Lakhs and the remaining Rs.2 Lakhs to be paid. In paragraph No.9, specifically it is pleaded that defendant Nos.1 and 2 falsely claimed that they have right over the portion of the suit schedule property in terms of the judgment and decree and the possession has been delivered in the Execution petition. The fact that the plaintiff is also a party in the execution petition is not in dispute and thereafter the suit is filed for the relief of declaration and it has to be noted that there was a decree in the year 2007 itself in favour of the defendant in earlier suit. The appeal was pending before this Court while purchasing and the appeal was also allowed and granted 1/4th share in R.F.A. Consequently, the FDP was filed and a Commissioner was appointed and the final decree was also drawn. Consequently, the possession was taken in the execution petition. When such being the case, the very

contention of the respondents is that the Court has to look into the only plaint averments and having taken note of the material on record in the very pleading, the plaintiff in paragraph Nos.9 and 10 pleaded with regard to an appeal and also the FDP proceedings. It is also his claim that he had purchased the property in the year 2010 and it is to be noted that the very suit of the year has not been mentioned in the plaint and cleverly drafted the plaint only mentions the R.F.A. and FDP proceedings. In paragraph Nos.9 and 10, they have not pleaded the original suit was of the year 1997 and also it is clear that in the year 1998 itself, the vendor of the plaintiff has given an undertaking that he will not alienate the property.

16. It is also important to note that the suit was decreed in the year 2007 and an appeal was pending before this Court. During the pendency of the appeal only, the plaintiff has purchased the property. The original suit is of the year 1997 was not pleaded in the plaint and in an ingenious method only pleaded R.F.A.No.2331/2007 and not stated anything about the decree passed in the suit and purchasing the property when

there was a decree and also there was an undertaking and the cause of action is also pleaded with regard to the date of purchase i.e., 20.03.2010 and the preliminary decree passed by this Court vide order dated 14.07.2017 and thereafter on 06.02.2009 when the final decree was drawn and the fact that the vendor is party to the suit, appeal and FDP proceedings is not in dispute.

17. The Apex Court in **P.V. Guru Raj Reddy's** case (supra), categorically held that while dealing with Order VII Rule 11 of CPC, the Court has to look into the averments of the plaint. In the plaint, it is only pleaded with regard to R.F.A. as well as FDP proceedings and the Court is required to see the averments of the plaint.

18. The Apex Court in **Sarvinder Singh's** case (supra), discussed in paragraph No.6 with regard to Section 52 of the Transfer of Property Act and categorically held that the alienation obviously would be hit by doctrine of lis pendens by operation of Section 52. Under these circumstances, the respondents cannot be considered to be either necessary or proper parties to the

suit. Hence, the plaintiff need not be a necessary party and the same is binding since his vendors are parties in all the proceedings.

19. In the case on hand, the vendors are the parties and also given an undertaking even though they sell the property after the decree, Section 52 attracts and the Apex Court in **Guruswamy Nadar's** case (supra), in paragraph No.13, the Apex Court held that, as a public policy once a suit has been filed pertaining to any subject-matter of the property, in order to put an end to such kind of litigation, the principle of lis pendens has been evolved so that the litigation may finally terminate without intervention of a third party. This is because of public policy otherwise no litigation will come to an end. Therefore, in order to discourage that same subject-matter of property, being subjected to subsequent sale to a third person, this kind of transaction is to be checked. Otherwise, litigation will never come to an end. The principles laid down in the judgment aptly applicable to the case on hand since there was an undertaking by the vendor of the plaintiff and also there was a decree prior

to the execution of the Sale Deed, the Sale Deed was executed when the appeal was pending before this Court and the same cannot create any right in favour of the plaintiff. Hence, there is no cause of action to file a suit as well as the litigation will never come to an end if proceeded to take up the suit, which is hit by Section 52 of the Transfer of Property Act.

20. This Court in **Smt. Mallamma's** case (supra), having discussed in detail the very provisions of Order VII Rule 11 (a) to (d) read with Section 151 of CPC in paragraph No.12 held that the Court has to be vigilant against any camouflage or suppression and is under an obligation to ascertain whether a litigation is utterly vexatious or is an abuse of process of the Court. The Court should be cautious while considering the material on record. Admittedly, in the case on hand, the suit was decreed and there was an undertaking and during the pendency of R.F.A., the property was purchased. Now, sought for the relief of declaration to declare that the preliminary decree obtained is not binding on the plaintiff or affecting the suit schedule property and when the same was purchased during the

pendency of the appeal, it cannot be contended that the order passed by this Court as well as in FDP cannot be held that it is not binding and in the judgment of the Apex Court referred supra, held that the alienation obviously would be hit by doctrine of lis pendens by operation of Section 52 as held in **Sarvinder Singh's** case (supra). When such being the case, there are no triable issues between the parties. Admittedly, the vendor of the plaintiff is a party to the earlier suit and R.F.A. and he has suffered the decree. When such being the material on record, the question of once again agitating the issue in respect of the very subject matter of the property, which is a portion of the property, suffered by the vendor of the plaintiff, who is bound by the judgment and decree passed against his vendor and there cannot be new grounds arise to him once again to litigate the same as held by the Apex Court in **P.V. Guru Raj Reddy's** case (supra), and no fresh cause of action arises to decide the issue which has already been decided and also the plaint averments exfacie discloses earlier there was a suit and there was a decree and the same was challenged in R.F.A. In R.F.A., this Court granted 1/4th share and final decree was also drawn and his

vendor has suffered the decree throughout and on a reading, the suit appears to be barred by law under Section 52 of the Transfer of Property Act and the same cannot be adjudicated in the Court once again. Hence, the order impugned passed by the Trial Court is liable to be set aside since the order suffers from its legality and correctness. Hence, I answer the point as 'affirmative'.

Point No.2:

21. In view of the discussions made above, I pass the following:

ORDER

- (i) The Civil Revision Petition is allowed.
- (ii) The impugned order dated 02.06.2022 on I.A.No.2 filed under Order VII Rule 11(d) read with Section 151 of CPC passed in O.S.No.671/2020 on the file of XXVIII Addl. City Civil Judge, Mayo Hall Unit, Bengaluru, is hereby set aside. Consequently, the application filed under Order VII Rule 11(d) read with Section 151 of CPC filed by the appellant is hereby allowed and consequently, the plaint is rejected.

**Sd/-
JUDGE**