

HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

A.S. No.626 of 2006

DATE: 20.04.2023

Between:

Mr.P.Rama Krishna and another

.....Appellants/Plaintiffs

And

Mr.K.Goverdhan Reddy @ Gopal Reddy and others

.....Respondents/Defendants

For Appellant(s)

:Sri Harender Prasad, Counsel
for Appellants

For Respondent(s)

: Sri Vedula Venkata Ramana,
Counsel for Respondent/s

< Gist:

> Head Note:

? CITATIONS:

1. (2008) 12 SCC 661
2. (2012) 8 SCC 706
3. 2020 SCC Online SC 482
4. (2003) 1 SCC 557
5. (2011) 9 SCC 126

THE HON'BLE SMT. JUSTICE M. G. PRIYADARSINI**A.S. No. 626 of 2006****JUDGMENT:**

The plaintiffs in O.S.No.573 of 2006, on the file of the learned I Additional Senior Civil Judge, Rangareddy District are the appellants before this Court. The challenge in this appeal is the order of the trial Court dated 18.08.2006 in I.A. No. 2077 of 2006 in allowing the application filed by the defendants under Order 7 Rule 11(d) C.P.C. thereby rejecting the suit as barred by limitation. For the sake of convenience, in this appeal, the parties are referred to as they were arrayed in the suit.

2. Plaintiff No. 1 is the husband of plaintiff No. 2. Defendant Nos. 1 & 2 are the sons and defendant No. 3 is the daughter-in-law of late K. Narayana Reddy. Plaintiffs laid the suit in O.S. No. 573 of 2006 against the defendants seeking specific performance of agreement of sale, dated 25.05.1988 executed by late K. Narayana Reddy in respect of the suit schedule property i.e., land admeasuring Ac.57.00 guntas, situated in Sy. Nos. 57 to 68, situated at Gangaram, Maheswaram Mandal, Ranga Reddy District. According to the plaintiffs, during his lifetime, K. Narayana Reddy agreed to sell the

suit schedule property in their favour for a consideration of Rs.5,00,000/- by receiving a sum of Rs.10,000/- towards advance sale consideration on 19.05.1988. Later, on 25.05.1988, said K. Narayana Reddy executed the agreement of sale (Ex.R.1) wherein the balance sale consideration was agreed to be paid within a period of two years from the date of execution of Ex.R.1. As per the agreement of sale, said K. Narayan Reddy, filed the papers before the revenue officials for mutation of the land and delivered the peaceful possession to the plaintiffs. Apart from Rs.10,000/- paid on 19.05.1988, the plaintiffs paid a further sum of Rs.10,000/- on 20.09.1988; Rs.15,000/- on 15.05.1989 and Rs.13,500/- on 18.07.1989, totaling to Rs.48,500/- to said K. Narayan Reddy and with mutual understanding, the name of the plaintiffs were recorded in the Pahani Nakal in Column No. 13 from the year 1988-89 onwards though the balance sale consideration was due to the executant. Since the land was not cultivable, the plaintiffs allegedly invested huge amount and started to raise the crops. Subsequently, the vendor changed his mind and in spite of receiving the balance sale consideration, he started harassing the plaintiffs. Therefore, the plaintiffs got issued a legal notice to the executant on 10.04.1990 and as he evaded to receive the said notice, they filed a suit against the executant seeking perpetual injunction in

O.S. No. 74 of 1990 on the file of District Munsiff (Junior Civil Judge) at Ibrahimpatnam, Ranga Reddy District wherein he obtained interim injunction orders in I.A. No. 166 of 1990. Since the executant i.e., the defendant therein, did not turn up, he was set ex parte on 11.02.1991, but the suit was dismissed for default on 25.02.1991. It is stated that pending the suit, there was amicable settlement between the plaintiffs and the executant, that the plaintiffs paid a sum of Rs.2,00,000/- to the executant and that as the plaintiffs did not turn up for ex parte evidence, the suit was dismissed for default on 25.02.1991. The plaintiffs continued to grow the crops on the suit land. Subsequently, on 17.08.1992, the plaintiffs paid a further sum of Rs.2,00,000/- to the executant followed by Rs.51,500/- on 26.06.1994 towards final payment of balance sale consideration with a assurance by the executant to register the sale deed in favour of plaintiffs or in favour of their legal heirs as and when demanded. As the plaintiff No. 2, wife of plaintiff No. 1, was sick, they could not concentrate on the said sale transaction and were under the *bona fide* impression that the defendant would register the sale deed in their favour as and when demanded. However, the vendor i.e., K. Narayan Reddy died on 22.09.1996 and his elder son i.e., K. Ram Reddy (husband of defendant No. 3) too expired on 18.09.2005. Though the defendants

assured the plaintiffs to execute the registered in their favour, they did not turn up and therefore, the plaintiffs got issued a legal notice on 28.02.2006 to the defendants demanding them to execute the registered sale deed in their favour. Having received the notice, the defendants did not come forward to execute the sale deed in favour of the plaintiffs. Hence, the plaintiffs filed the suit seeking specific performance of agreement of sale dated 25.05.1988.

3. Contesting the suit, the defendant No. 1 filed his written statement *inter alia* contending that the suit is not filed within the stipulated period after issuance of the legal notice on 10.04.1990 and therefore, the suit is liable to be rejected under Article 54 of the Limitation Act. The mode of payment of sale consideration by the plaintiffs as alleged in the plaint is also disputed.

4. Before the framing of issues, the defendants filed I.A. No. 2077 of 2006 under Order 7 Rule 11(d) r/w Section 151 C.P.C. seeking rejection of the plaint contending *inter alia* that the suit filed by the plaintiffs seeking specific performance of contract is after expiry of period of limitation as provided under Article 54 of Limitation Act. According to the defendants, their father did not execute the agreement of sale, dated 25.05.1988 and that he did not receive any

sale consideration as claimed by the plaintiffs. Their father, the executant of the agreement of sale, is not the owner of the suit schedule property and therefore, he cannot convey the better title that he possessed. In fact, it is their mother, late K. Kamamma, who purchased the suit schedule property and after her death, the defendants succeeded to the suit property. It is their claim that during her lifetime, she executed a registered gift settlement deed in favour of defendant No. 1 in respect of Ac.35.37 guntas in various suit survey numbers. The payment of sale consideration allegedly made by the plaintiffs on 17.08.1991 and on 26.06.1994 is also specifically denied by them. The plaintiffs never approached them during the last 18 years and by misrepresenting the facts, they filed the suit. They have issued a suitable reply on 09.03.2006 to the legal notice issued by the plaintiffs on 28.02.2006, which was served on the plaintiffs on 13.03.2006. It is contended that the plaintiffs having failed to file the suit within three years from the date of issuance of legal notice, dated 10.04.1990, the suit is liable to be rejected as time barred.

5. Contesting the I.A., the plaintiffs filed a counter contending that the suit is not barred by limitation as the father of the defendants, late K. Narayan Reddy received balance sale consideration even after

expiry of period of limitation and therefore, the time for completion of contract under Ex.R.1 cannot be construed as the essence of the contract.

6. In support of their claim in the I.A., the defendants got marked Exs.P.1 to P.18 and the plaintiffs got marked Exs.R.1 to R.20. By the impugned order, the trial Court allowed the I.A. rejecting the plaint holding that *“the plaintiffs have not filed the suit for specific performance when late K. Narayana Reddy failed to perform his part of contract in spite of issuing legal notice dt. 10.04.1990. He is therefore debarred from filing the suit for specific performance. Thus, the suit is not only barred by Law of Limitation, but it is also barred by Order 2, Sub-rule (2) of CPC”*.

7. Sri Harender Prasad, the learned Senior Counsel, appearing on behalf of the appellants-plaintiffs submits that the trial Court ought to have considered the fact that after issuance of legal notice dated 10.04.1990, the executant had received payments and therefore, the limitation stands extended from the last payment dated 26.06.1994. Since the suit was already numbered, the trial Court ought not to have rejected the suit on the ground being it barred by limitation and if at all, the Court ought to have rejected the plaint even before numbering

the suit. It is contended that the limitation for filing the suit comes into picture only when the defendants deny the execution of the sale deed after receipt of last payment and that the trial court erred in rejecting the plaint by going beyond the contents of the plaint which is barred under Order 7 Rule 11 C.P.C. It is contended that the findings of the trial Court in holding that at the threshold, the plaintiffs ought to have filed the suit for specific performance instead of suit for perpetual injunction as was filed in O.S. No. 74 of 1990 is erroneous under law for the reason that the said suit was filed during the lifetime of executant that too, when he tried to interfere with the peaceful possession of the plaintiffs over the suit schedule property.

8. On the other hand, Sri Vedula Venkataramana, learned Senior Counsel, appearing on behalf of the defendants, respondents in the appeal, submits that admittedly, the suit was filed by the plaintiffs seeking specific performance of agreement of sale dated 25.05.1988 allegedly executed by the father of the defendant Nos. 1 & 2 in respect of the suit schedule property, wherein two years' time was stipulated for execution of the sale deed. Even according to the plaintiffs, they got issued the legal notice to the executant on 10.04.1990 but they filed the suit only in the year 2006 and therefore, the plaintiffs having

not chosen to file the suit within three years from the date of issuance of legal notice, dated 10.04.1990, the trial Court has rightly held that the suit is hopelessly barred by limitation.

9. The point that arises for consideration in this appeal is *'whether the order of the trial Court in allowing the application filed under Order 7 Rule 11(d) CPC and rejecting the suit as barred by limitation is sustainable under law?*

10. The rejection of the application under Order 7 Rule 11 of the CPC is the bone of the contention in this appeal. In the instant case, the plaintiffs seek a decree for specific performance of agreement of sale dated 25.05.1988, Ex.R.1, executed by late K. Narayana Reddy, the father of defendant Nos. 1 & 2 and father-in-law of defendant No. 3 in respect of the suit schedule land. According to the plaintiffs:-

i) Late K. Narayana Reddy, during this lifetime, agreed to sell the suit schedule land in favour of the plaintiffs for a consideration of Rs.5,00,000/- and in pursuance thereof, he received a sum of Rs.10,000/- on 19.05.1988 under Ex.R.2 receipt as part of sale consideration;

ii) On 25.05.1988, said K. Narayana Reddy executed Ex.R.1, agreement of sale in favour of plaintiffs agreeing to sell the suit

schedule property wherein, balance sale consideration was agreed to be paid within a period of two years from the date of agreement of sale;

iii) Plaintiffs paid the balance sale consideration to the executants on different dates i.e., Rs.10,000/- on 20.09.1988 under Ex.R.3; Rs.15,000/- on 15.05.1989 under Ex.R.4; Rs.13,500/- on 18.07.1989 under Ex.R.5; Rs.2,00,000/- on 25.02.1990 under Ex.R.6; Rs.2,00,000/- on 17.08.1992 under Ex.R.7; and Rs.51,500/- on 26.06.1994 under Ex.R.8.

iv) On 10.04.1990, plaintiffs got issued a legal notice to the executant i.e., K. Narayana Reddy, demanding him to execute a registered sale deed by receiving balance sale consideration.

v) Plaintiffs filed suit for perpetual injunction against K. Narayana Reddy in O.S. No. 74 of 1990 on the file of the Junior Civil Judge, Ibrahimpatnam, which was eventually dismissed for default on 25.02.1991.

vi) The executant i.e., K. Narayana Reddy died on 22.09.1996 and his elder son i.e., the husband of defendant No. 3 died on 18.09.2005.

11. 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 plaint is returned 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:*

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]”

12. Thus, Order 7 Rule 11(d) of CPC provides that the plaint shall be rejected “*where the suit appears from the statement in the plaint to*

be barred by any law”. Hence, in order to decide whether the suit is barred by any law, it is the statement in the plaint which will have to be construed. The Court while deciding such an application must have due regard only to the statements in the plaint. Whether the suit is barred by any law must be determined from the statements in the plaint and it is not open to decide the issue on the basis of any other material including the written statement in the case. The recitals in Ex.R.1, agreement of sale, discloses that the time is the essence of the contract. The relevant portion of Ex.R.1 reads thus:-

[...]And whereas the Vendees have jointly paid a sum of Rs.10,000/- (Rupees ten thousand only) to the Vendor towards earnest money in respect of the above mentioned agricultural land and the Vendees further agreed and promise to pay the balance sale consideration of Rs.4,90,000/- (Rupees four lakhs and ninty thousand only) within (2) two years commencing from the date of this agreement of sale.

Whereas the Vendor shall execute a registration sale deed in favour of the Vendees or their nominee or nominees within the stipulated period and the Vendees shall pay the balance amount before the Sub-Registrar or Registrar on the day of execution and registration of sale deed i.e. on or before 18th May, 1990. ...”

13. Thus, time is explicitly mentioned as the essence of the contract. In order to reject a plaint for the suit being barred by any law under Order 7 Rule 11(d), the court needs to be guided by the averments in the plaint and not the defence taken. At this stage, it would be necessary to refer to the decision of the Apex Court in **Kamala & others v. KT Eshwara Sa**¹, wherein the Apex Court while examining the ambit of Order 7 Rule 11(d) of the CPC observed as under:-

*“21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. **Such a conclusion must be drawn from the averments made in the plaint.** Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. **What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint...**”*

(emphasis supplied)

¹ (2008) 12 SCC 661

14. In **Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust**², the Apex Court observed that:

“10. [...] It is clear from the above that where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the court, insufficiently stamped and not rectified within the time fixed by the court, barred by any law, failed to enclose the required copies and the plaintiff fails to comply with the provisions of Rule 9, the court has no other option except to reject the same. A reading of the above provision also makes it clear that power under Order 7 Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial.

11. This position was explained by this Court in Saleem Bhai v. State of Maharashtra [(2003) 1 SCC 557] , in which, 7 (2012) 8 SCC 706. 16 while considering Order 7 Rule 11 of the Code, it was held as under: (SCC p. 560, para 9) “9. A perusal of Order 7 Rule 11 CPC makes it clear that 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 under Order 7 Rule 11 CPC 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

² (2012) 8 SCC 706

would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court.” It is clear that in order to consider Order 7 Rule 11, the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in Raptakos Brett & Co. Ltd. v. Ganesh Property [(1998) 7 SCC 184] and Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express [(2006) 3 SCC 100].”

15. In a more recent decision, a Three-Judge Bench of Apex Court in **Shakti Bhog Food Industries Ltd. v. Central Bank of India and Another³**, was dealing with the rejection of a plaint under Order 7 Rule 11 CPC by the Trial Court, on the ground that it was barred by limitation, while referring to its earlier decisions, including in **Saleem Bhai v. State of Maharashtra⁴**, **Church of Christ Charitable Trust** (supra), observed that:

³ 2020 SCC OnLine SC 482

⁴ (2003) 1 SCC 557

“It is clear that in order to consider Order 7 Rule 11, the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averment. These principles have been reiterated in Raptakos Brett & Co. Ltd. v. Ganesh Property, (1998) 7 SCC 184 and Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express, (2006) 3 SCC 100.”

16. Even as per the pleadings in the plaint, although late K. Narayana Reddy cooperated the plaintiffs in recording their names in the revenue records such as Pahani Nakal in Column No. 13, started harassing them in executing the registered sale deed, which necessitated them to issue legal notice on 10.04.1990 demanding him to execute the sale deed by receiving the remaining sale consideration (a copy of notice dated 10.04.1990 was not filed along with the plaint). As the executant, K. Narayana Reddy, did not respond to the said notice, the plaintiffs filed the suit in O.S. No. 74 of 1990. It is curious to note that the said suit was filed with a relief of perpetual injunction but not for specific performance of agreement of sale,

Ex.R.1. It is stated in the plaint that it is only when the said suit was pending, the plaintiffs paid part of the sale consideration. However, the suit came to be dismissed for default on 25.02.1991. Even thereafter, as per the pleadings in the plaint, the plaintiffs paid a sum of Rs.2,00,000/- and Rs.51,500/- on 17.08.1992 and 26.06.1994 respectively. Thus, during the lifetime of the executant, K. Narayana Reddy, though the plaintiffs were aware that the executant harassed them and not cooperated for fulfilling his part of the contract, they did not choose to institute the suit for specific performance, but simply filed the suit for perpetual injunction, which ended into dismissal for non-prosecution. As already observed, as per the recitals under Ex.R.1, the time of execution of the sale deed is 18.05.1990 and as per Article 54 of the Limitation Act, the limitation of three years for filing the suit starts from the said date which expires by 17.05.1993. The plaintiffs stated to have issued notice to late K. Narayana Reddy on 10.04.1990 seeking registration of sale deed as he was harassing and not cooperating for registration of sale deed and filed the suit for perpetual injunction. In the pleadings, it is stated that the plaintiffs were not aware about the death of K. Narayana Reddy until they heard it from the defendants when they approached the defendants insisting them for registration. As the defendants too

refused to execute the registered sale deed, the plaintiffs got issued the legal notice on 28.02.2006 and filed the suit on 13.03.2006.

17. There was no explanation provided as to why the plaintiffs remained completely silent for a period of 12 years i.e., from 26.06.1994, the date on which the complete balance sale consideration was allegedly paid by the plaintiffs till 28.02.2006, the date on which the legal notice was taken out on the defendants. The trial Court found that the conduct of the plaintiffs in not taking recourse to legal action for over 12 years even from the date of payment of last part of balance sale consideration was demonstrative of the fact that the institution of the suit was barred by limitation.

18. While interpreting Articles 58 and 59 of the Limitation Act, 1963, the Apex Court relied on *Khatri Hotels Private Limited v. Union of India*⁵ to reiterate that the period of limitation will begin to run from the date when the first right to sue accrues. Accordingly, it observed that since the suit was filed much after the expiry of three years when the first right to sue occurred, it found the suit to be barred by limitation.

⁵ (2011) 9 SCC 126

19. It is contended by the learned counsel for the appellant that the time mentioned in Ex.R.1 cannot be construed to be the essence of the contract inasmuch as late K. Narayana Reddy had accepted part of sale considerations on 17.08.1992 & 26.06.1994. Even if the said contention is accepted, as noted above, there is no explanation in the plaint as to what made the plaintiffs to wait from 1994 to 28.02.2006. Nothing is mentioned in the plaint except stating that the plaintiffs were under impression that the defendants would come forward and execute the sale deed. Even the explanation offered by the plaintiffs that they were not aware of the death of late K. Narayana Reddy till they approached the defendants seeking execution of the sale deed is also too hard to believe. Even the contention of the learned Senior Counsel for the appellant that the trial Court erred in rejecting the suit after numbering the suit on the ground of barred by limitation is devoid of merits in view of the law laid down by the Apex Court in **Shakti Bhog Food Industries Ltd.** (supra). Therefore, for the forgoing discussion, the learned trial Court rightly came to the conclusion that the suit is not only barred by limitation but also barred by Order II sub-Rule (2) of C.P.C. The appeal is devoid of merits and the same is liable to be dismissed.

20. In the result, the appeal stands dismissed confirming the order, dated 18.08.2006 passed in O.S.No.573 of 2006 on the file of the I Additional Senior Civil Judge, Ranga Reddy District at L.B. Nagar, Hyderabad. No order as to costs.

SMT. M.G. PRIYADARSINI, J

20th April, 2023

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Note: L.R. copy to be marked.

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