

THE HON'BLE SRI JUSTICE T. VINOD KUMAR

CIVIL REVISION PETITION No. 769 of 2023

ORDER:

1. The present Civil Revision Petition is filed aggrieved by the order and decretal order dated 10.02.2023 in I.A. No. 670 of 2022 in O.S. No.144 of 2022 passed by the II Additional District & Sessions Judge, Medchal-Malkajgiri, at Medchal.
2. Heard Sri. R. Ranganath, learned Counsel for the petitioner, Sri. Deepak Bhattacharjee, learned Senior Counsel appearing for Sri. Dishit Bhattacharjee, learned counsel for the respondents and perused the record.
3. The Petitioners herein are the defendants in the suit filed by the Respondents herein for declaration of title, declaration of the Gift Settlement Deeds bearing Doc. No.14634 of 2018 and 14635 of 2018 as null and void and for grant of consequential perpetual injunction.
4. While so, the petitioners herein filed the underlying interlocutory application seeking rejection of plaint under Order 7 Rule 11(a) of the Code of Civil Procedure, 1908 (for

short 'the Code') on the ground that cause of action for the plea of adverse possession was not disclosed.

5. The Trial Court on hearing the parties, held that on a meaningful reading of the averments in the plaint, the circumstances mentioned therein disclose sufficient cause of action. The Court further held that the plaint cannot be rejected on the threshold merely because an alternate plea of adverse possession was raised.
6. The present revision is preferred aggrieved by the same.
7. Learned Counsel for the petitioner herein by placing reliance on the judgment of the Apex Court in *Achal Reddy Vs. Ramakrishna Reddair & Ors*¹, contended that a plea of adverse possession cannot be raised on the basis of an agreement of sale since the agreement holder recognizes the title of the vendor.
8. He further contends that no specific pleading is made as to when the possession of respondents had become adverse. By

¹ (1990) 4 SCC 706

placing reliance on the decision of the Apex Court in *Mayar (H.K.) Ltd. and Ors. Vs. Owners and Parties, Vessel M.V. Fortune Express and Ors*², it is contended that cause of action must be real and not illusionary.

9. *Per Contra*, learned Senior counsel for the respondent contends that the plea of adverse possession is an alternate plea raised by the respondents, notwithstanding the same a perusal of the plaint would reveal that the respondents herein were claiming physical possession over the plaint scheduled property from the date of the original sale deed *i.e.*, 22.06.2000, which by itself is adverse to the title of the petitioner No.3 who at the said point of time was the owner of the property. It is further contended that the petitioners herein are seeking rejection of the plaint on the ground that no relief can be granted to plaintiff, and that the same cannot be a ground for rejection of the plaint.
10. I have taken note of the contentions urged.

² (2006)3SCC100

11. At the outset it is beneficial to note that the power of rejection of plaint is conferred on the Courts to ensure that meaningless and abortive litigation are prevented from occupying the time of the Court (*See: Azhar Hussein vs. Rajiv Gandhi*³).
12. The Hon'ble Supreme Court in *Saleem Bhai and Ors. Vs. State of Maharashtra and Ors*⁴, held that the Court while deciding an application under Order 7 Rule 11 of the Code has to only consider the averments in the plaint and that the pleas taken by the defendant in the written statement are wholly irrelevant. Further, the Hon'ble Supreme Court in *Shakti Bhog Food Industries Ltd. Vs. The Central Bank of India and Ors*⁵, held that the pleadings in plaint ought to be read as a whole without compartmentalizing, isolation, dissection, inversion of the language in the plaint, in order to ascertain its true meaning.

³ 1986 (supp) SCC 315 : AIR 1986 SC 1253

⁴ (2003)1SCC557

⁵ AIR2020SC2721

13. The Hon'ble Supreme Court in *Mayar (H.K.)'s* case (supra), held that so long as the plaint discloses some cause of action which requires determination, the Court cannot reject it on the threshold merely because it is of the opinion that the plaintiff may not succeed in his case.
14. The erstwhile High Court of Andhra Pradesh in *Kasani Narasimhulu Vs. Sathagowni Srinivas Goud and Ors*⁶, held that since the rejection of a plaint denies the entry of a citizen into the Civil Court, the power under Order 7 Rule 11 has to be exercised carefully and cautiously. The Court while observing that, there is a clear distinction between a case where the plaint does not disclose the cause of action and where a conclusion can be arrived at that there is no cause of action, held that a plaint can only be rejected when it does not disclose cause of action.
15. In the background of the position of law as discussed above, if the averments in the plaint are considered, it is observed that

⁶ MANU/AP/3405/2013

the respondents herein claim to be the joint and several owners and possessors of land admeasuring Ac. 2.39 guntas in Sy.No.105 Part, situated in Kompally Village, Qutubullapur Mandal, Medchal – Malkajgiri District. It is claimed that out of the said land, a land admeasuring Ac.0-19.83 Guntas was sold by their vendors to the Petitioner No.3 herein, who is the wife of the Respondent No.1's nephew. The said transaction was executed *vide* registered Sale Deed Doc. No. 4204/2000 dated 22.06.2000. However, it is claimed that the respondents herein were always in actual physical possession since the Petitioner No.3 herein had proposed to sell the same to the respondents herein for a total sale consideration of Rs.8 lakhs. Thereafter it is claimed that the respondents had constructed a compound wall in the year 2000. Subsequently the respondents claim to have constructed buildings and sheds in the year 2006 2007.

16. The averments in the plaint further disclose that an agreement of sale was entered into by the parties on 17.10.2003 and the total sale consideration of Rs. 8 Lakhs was paid to the

petitioner No. 3 herein on 17.11.2003. It is also averred that though no sale deed was executed by the petitioner No.3 herein the respondents were in actual possession of the property from 22.06.2000 as they had paid the total consideration agreed.

17. Alternatively, it is averred that even assuming the petitioner No.3 continued to be the owner of the land admeasuring Ac.0-19.83 guntas, the respondents had acquired absolute title over the entire extent of property having adverse possession for the last 22 years, since the property formed an integral part of their lands consisting of KVR Convention from the year 2000 itself.

18. The above averments as pleaded in the plaint clearly disclose that the respondents were in uninterrupted adverse possession of the land from the year 2000 when the petitioner No.3 was the owner of the property. Therefore, this Court is of the view that a meaningful reading of the plaint discloses sufficient cause of action.

19. Further, as held by the Hon'ble Supreme Court in *Gurdev Singh Vs Harvinder Singh*⁷, and the erstwhile High Court of Andhra Pradesh in *Kasani Narasimhulu's* case (supra), a plaintiff cannot be rejected at the threshold on the ground that the plaintiff is not entitled to any relief. Therefore, the contention that adverse possession cannot be claimed on the basis of an agreement of sale, since they are inconsistent or mutually destructive pleas, cannot be a ground to reject the plaintiff under Order 7 Rule 11 (a) of the Code.

The merits of such pleas are to be adjudicated by the Trial Court after conducting a trial.

20. In the light of the aforesaid discussion, this Court is of the view that the impugned order does not merit interference by this Court in exercise of its supervisory jurisdiction conferred under Article 227 of the Constitution of India.
21. Accordingly, this Civil Revision Petitions is dismissed. The order and decretal order dated 10.02.2023 in I.A. No. 670 of

⁷ MANU/SC/1685/2022

2022 in O.S. No.144 of 2022 passed by the II Additional District & Sessions Judge, Medchal-Malkajgiri, at Medchal is sustained.

22. Consequently, miscellaneous petitions pending if any shall stand closed. No order as to costs.

T. VINOD KUMAR, J

Date: 10.11.2023

VSV/MRKR