

**THE HON'BLE DR.JUSTICE K. MANMADHA RAO****C.R.P.No.1100 of 2023****ORDER:**

Aggrieved by the orders dated 27.12.2022 passed in I.A.No. 751 of 2022 in O.S.No.241 of 2014 on the file of the Court of II Additional District Judge, Ongole, the present revision is filed.

2. The petitioner herein is the 1<sup>st</sup> defendant before the court below. The 1<sup>st</sup> respondent is the plaintiff has filed a suit in O.S.No. 241 of 2014 for partition against the defendants therein, wherein the petitioner herein has filed an application under Order VII, Rule 11 and Section 151 of C.P.C to reject the plaint of O.S.No.241 of 2014. The Court below after hearing on both sides has dismissed the application. Aggrieved by the same, the present revision filed.

3. Heard Mr. Kishore Babu Manne, learned counsel for the petitioner and Ms. Ayesha Azma, learned counsel for the 1<sup>st</sup> respondent.

4. Learned counsel for the petitioner would contend that the court below failed to understand the purport of rejecting the plaint, though it is admitted by the 1<sup>st</sup> respondent/ plaintiff is that the properties described in Ex.B1 to B3 were alienated by him under Sale Deeds, but the 1<sup>st</sup> respondent/ plaintiff concealed that

fact in the plaint and claiming equal shares in the remaining properties and erroneously dismissed the said application. Further the court below has not given any proper reasons while dismissing the application and the same is liable to be set aside.

5. On the other hand, learned counsel for the respondent would contend that the court below has rightly dismissed the application by given cogent reasons and come to a conclusion that the contention raised by the petitioner in rejecting the plaint can be raised at the time of arguments, since the suit is coming up for arguments. Further the plaintiff discloses cause of action for filing of the suit in the plaint at the time of institution of the suit. Since no ingredients mentioned under Order VII, Rule 11(a) of C.P.C to reject the plaint are not attracting for rejection of the plaint. Therefore this Court needs no interference in the impugned order and prayed to dismiss the application.

6. Perused the record.

7. The main contention of the petitioner/ 1<sup>st</sup> defendant is that the properties covered under Ex.B1 to B3 are not included in the plaint schedule and plaint itself is deceptive one as partition had already taken place and the 1<sup>st</sup> respondent admitted that he sold out the property covered under Ex.B1 to B3. Since there is no

cause of action in the plaint and the properties shown in the plaint are ancestral properties. Therefore the plaint is liable to be rejected.

8. Whereas the 1<sup>st</sup> respondent i.e plaintiff in the suit would contend that the petitioner/ 1<sup>st</sup> defendant has not filed under order VII, Rule 11 of CPC at earlier point of time, even though admissions are made by the 1<sup>st</sup> respondent/ plaintiff, the same can be argued at the time of final hearing and drawn the attention of this Court with regard to Order 11 of CPC - Rejection of the plaint. In support of his contention, he relied on a decision of this Court in **“Kasani Narasimhulu vs. Sathagowni Srinivas Goud and Others”**<sup>1</sup> wherein the learned Single Judge of erstwhile High Court of Andhra Pradesh, held as follows:

*“15. In **Mayar (H.K) LTD** (supra 2), the Hon’ble Apex Court at Paragraphs 11 and 12 held as follows:*

*“11. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order VII Rule 11 of the Code. Essentially,*

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<sup>1</sup> CRP No.3310 of 2013, dated 28.10.2013 High Court of A.P

*whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, 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.*

So also, he relied on a Judgment of the Hon'ble Apex Court in **“Saleem Bhai and Others vs. State of Maharashtra and Others”**<sup>2</sup> wherein it was held as follows:

*“A perusal of Order VII, Rule 11 C.P.C 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 VII, Rule 11 C.P.C 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”.*

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<sup>2</sup> Indian Kanoon – <http://indiankanoon.org/doc/661632>

9. Upon perusal of the order of the trial court would go to show that the trial court clearly stated that the scope of the petitioner is very limited and the entire averments in the plaint are to be considered, but not one sentence in the plaint. Further the ingredients under Order VII, Rule 11 CPC are not attracting to the petition filed by the petitioner/ 1<sup>st</sup> defendant. So also the trial court followed the principle laid down by the Division Bench in **“H.Hari Krishna and Others vs. Bandla Balaram and Another”<sup>3</sup>**.

10. Therefore, the trial court rightly held that the contention raised by the petitioner in rejecting the application can be raised at the time of arguments and no ingredients under order VII, Rule 11(a) of CPC attracted for rejection of plaint. In the instant case, the contentions/ objections raised by the petitioner is also decided only on merits by examining both oral and documentary evidence at length, then only it can be possible to ascertain, whether the contention of the petitioner/ 1<sup>st</sup> defendant is correct or not in view of the ratio laid down by the Hon’ble Apex Court and also decision of this Court cited supra.

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<sup>3</sup> 2022(3) ALT 411 D.B

11. In such circumstances, the court finds no merit in the argument of the petitioner and after close scrutiny of the impugned order would go to show that there is impropriety or illegality in the order of the trial court and the trial court has envisaged the reasons and interference of this Court is unwarranted.

12. Accordingly, the C.R.P is dismissed. There shall be no order as to costs.

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**DR.JUSTICE K. MANMADHA RAO**

Date: 18.08.2023.

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