

## **N.V.Srinivasa Murthy And Others vs Mariyamma (Dead) By Proposed Lrs And ... on 11 July, 2005**

**Bench: D. M. Dharmadhikari, B. N. Srikrishna**

CASE NO.:

Appeal (civil) 4500 of 2004

PETITIONER:

N.V.Srinivasa Murthy and others

RESPONDENT:

Mariyamma (dead) by Proposed LR's and others

DATE OF JUDGMENT: 11/07/2005

BENCH:

D. M. Dharmadhikari & B. N. Srikrishna

JUDGMENT:

**J U D G M E N T** Dharmadhikari J.

In these appeals preferred by the plaintiffs the only question involved is whether the trial court and the High Court were right in holding that the plaint under Order VII Rule 11 of the Code of Civil Procedure was liable to rejection. The High Court by the impugned order passed in Misc. Second Appeal reversed the order of the first appellate court and upheld that of the trial court.

Learned counsel appearing for the plaintiff in this appeal contends that if the plaint allegations containing all facts are read in proper perspective, 'cause of action' has clearly been pleaded and the High Court grossly erred in rejecting the plaint on the ground that it does not disclose any cause of action.

With the assistance and on the comments and counter comments of the parties, we have carefully gone through the contents of the plaint. We find that the plaint has been very cleverly drafted with a view to get over the bar of limitation and payment of ad valorem court fee. According to us, the plaint was rightly held to be liable to rejection if not on the alleged ground of non-disclosure of any cause of action but on the ground covered by clause (d) of Rule 11 of Order VII of Code of Civil Procedure namely that 'the suit appears from the statement in the plaint to be clearly barred by law'.

As per the plaint allegations of the plaintiffs, their late father had incurred some debts and had therefore borrowed a sum of Rs.2000/- from the predecessor in title of the defendants. By way of security for the loan advanced, a registered sale deed was executed on 5.5.53 with a contemporaneous oral agreement that on return of the borrowed sum with interest payable thereon @ 6% per annum, the registered re-conveyance deed shall be executed in favour of the borrower. In the plaint it is further averred that even after execution of the registered sale deed, which according

to plaintiff was, in fact merely a loan transaction, the father of the plaintiffs and thereafter the plaintiffs continued to be in possession of the suit lands and paid the land revenue. The other averments in the plaint are that as the lands in suit were already under mortgage with Bangalore Central Co-operative Bank Ltd., they could not have been sold.

Further averment in the plaint is that the defendants had executed a receipt on 30.7.1963 in favour of the first plaintiff acknowledging return of certain amounts under the loan with an oral promise to execute a registered reconveyance deed in favour of the plaintiffs. In paragraph 9 of the plaint a statement was made to the effect that in respect of the registered sale deed of 1953, on payment of entire outstanding amount of loan, the receipt was obtained on 25.3.1987 from the defendants and the original registered sale deed dated 5.5.53 was returned to the first plaintiff with an oral promise by the defendants to execute a registered document in favour of plaintiff/borrower.

On reading all the averments in paragraph 9 of the plaint, it is apparent that the cause of action for obtaining a registered reconveyance deed from the defendants in favour of the plaintiffs first arose on 25.3.1987 when the entire loan amount was alleged to have been repaid and an oral promise was given by the defendants to reconvey the suit lands.

In paragraph 11 of the plaint it is stated that the plaintiff had earlier filed Civil Suit No.557 of 1990 in the Court of Second Munsiff, Bangalore seeking permanent injunction restraining the defendants from interfering with the possession and enjoyment of the suit land by the plaintiffs. That suit, it is stated, was pending on the date of filing of the present suit.

In paragraph 12 there are averments with regard to the revenue proceedings concerning mutation of names over the lands in question. It is pleaded that the plaintiffs made formal application for mutation of their names on the lands and at that time the village accountant, in conspiracy with the second defendant, manipulated the revenue records. An ante-dated application for mutation was alleged to have been filed by the defendants. No date or year in which such manipulation took place has been stated in the plaint. The said paragraph further reads that in the revenue proceedings Tehsildar passed an order on 16.2.1990 directing the Deputy tehsildar to personally inspect the lands in suit and then make entries in the Pahanis (revenue records). The Deputy Tehsildar, it is alleged made a local inspection without giving any notice to the plaintiffs, and thereafter, mutation in the revenue records was made in favour of the second defendant. The plaintiffs then challenged the order of the Tehsildar and the Deputy Tehsildar by way of an appeal before the Assistant Commissioner who confirmed the orders of the lower revenue authorities.

The cause of action is said to have arisen when the Assistant Commissioner by order dated 28.4.1994 confirmed the orders of the lower authorities directing mutation of the names of the defendants on the suit lands and then again in the first week of July 1995 when the defendants as alleged had made an attempt to interfere with the plaintiffs' possession and enjoyment of suit lands. The suit was filed on 26.8.1996. In the prayer clause, the relief claimed in the suit are

(a) declaration that the plaintiffs are absolute owners of the suit lands

(b) permanent injunction restraining defendants from wrongfully entering the scheduled property and from interfering with the peaceful possession and enjoyment of scheduled lands.

As seen from the pleadings it is clear that foundation of the suit is that the registered sale deed dated 5.5.1953 was, in fact, only a loan transaction executed to secure the amount borrowed by the plaintiff's predecessor. The amount borrowed was alleged to have been fully paid back on 25.3.1987 and in acknowledgement thereof a formal receipt was obtained. At the same time, there was an alleged oral agreement by the defendants to reconvey the property to the plaintiff by registered deed.

On the above averments, relief of declaring the registered sale deed dated 5.5.1953 to be a loan transaction and second relief of Specific Performance of oral agreement of re-conveyance of the property by registered instrument should and ought to have been claimed in the suit. A suit merely for declaration that the plaintiffs are absolute owners of the suit lands could not have been claimed without seeking declaration that the registered sale deed dated 5.5.1953 was a loan transaction and not a real sale. The cause of action for seeking such a declaration and for obtaining re-conveyance deed according to the plaintiff's own averments in paragraph 9 of the plaint, arose on 25.3.1987 when the plaintiffs claimed to have paid back the entire loan amount and obtained a promise from the defendants to reconvey the property. Reckoning the cause of action from 25.3.1987, the suit filed on 26.8.1996, was hopelessly barred by time.

The averments in paragraph 12 of the plaint concerning the mutation proceedings before the revenue authorities did not furnish any fresh cause of action for the suit and they appear to have been made as a camouflage to get over the bar of limitation. The dispute of mutation in the revenue court between the parties arose only on the basis of registered sale deed dated 5.5.1953. The orders passed by Tehsildar/Assistant Commissioner did not furnish any independent or fresh cause of action to seek declaration of the sale deed of 5.5.53 to be merely a loan transaction. The foundation of suit does not seem to be the adverse orders passed by revenue courts or authorities in mutation proceedings. The foundation of suit is clearly the registered sale deed of 1953 which is alleged to be a loan transaction and the alleged oral agreement of re-conveyance of the property on return of borrowed amount.

In paragraph 11 of the plaint, the plaintiffs have stated that they had earlier instituted original suit No.557 of 1990 seeking permanent injunction against defendants and the said suit was pending when the present suit was filed. Whatever relief the petitioners desired to claim from the civil court on the basis of averment with regard to the registered sale deed of 1953 could and ought to have been claimed in original civil suit No.557 of 1990 which was pending at that time. The second suit claiming indirectly relief of declaration and injunction is apparently barred by Order 2, Rule 2 of the Code of Civil Procedure.

After examining the pleadings of the plaint as discussed above, we are clearly of the opinion that by clever drafting of the plaint the civil suit which is hopelessly barred for seeking avoidance of registered sale deed of 5.5.1953, has been instituted by taking recourse to orders passed in mutation proceedings by the Revenue Courts.

Civil suit No.557 of 1990 was pending when the present suit was filed. In the present suit, the relief indirectly claimed is of declaring the sale deed of 5.5.1953 to be not really a sale deed but a loan transaction. Relief of reconveyance of property under alleged oral agreement on return of loan has been deliberately omitted from the relief clause. In our view, the present plaint is liable to rejection, if not on the ground that it does not disclose 'cause of action', on the ground that from the averments in the plaint, the suit is apparently barred by law within the meaning of clause (d) of Order VII, Rule 11 of Code of Civil Procedure.

The High Court does not seem to be right in rejecting the plaint on the ground that it does not disclose any 'cause of action'. In our view, the trial court was right in coming to the conclusion that accepting all averments in the plaint, the suit seems to be barred by limitation. On critical examination of the plaint as discussed by us above, the suit seems to be clearly barred on the facts stated in the plaint itself. The suit as framed is prima facie barred by the law of limitation, provisions of Specific Relief Act as also under Order 2 Rule 2 of the Code of Civil Procedure.

This is a fit case not only for rejecting the plaint but imposing exemplary costs on the appellant on the observations of this Court in the case of T. Arvindam vs.T.V.Satyapal [1977 (4) SCC 467] :-

"The trial court must remember that if on a meaningful no formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise its power under Order VII, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, the court must nip it in the bud at the first hearing by examining the party searchingly under Order X, CPC. An activist judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men (Ch.XI) and must be triggered against them."

In the result, the appeal fails with costs incurred throughout by the respondents to be paid by the appellants. A further cost in the sum of Rs.10,000 (Rupees ten thousand only) is imposed on the appellant to be paid to the respondents for prosecuting and prolonging litigation up to this Court in a hopelessly barred suit.

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