

## Sakina Bee and Others Vs Venkat Swamy and Another

**Court:** Andhra Pradesh High Court

**Date of Decision:** Dec. 1, 2006

**Acts Referred:** Civil Procedure Code, 1908 (CPC) – Order 2 Rule 2, Order 7 Rule 11, Order 8 Rule 6, Order 8 Rule 6A(4)

Limitation Act, 1963 – Article 65

**Citation:** (2007) 4 ALT 65

**Hon'ble Judges:** T. Ch. Surya Rao, J

**Bench:** Single Bench

**Advocate:** B.V. Bakshi, for the Appellant; K. Venkatesh Gupta, for the Respondent

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

T. Ch. Surya Rao, J.

1. The civil revision petition is directed against the order dated 12th September 2006 passed by the learned Senior Civil Judge, Gadwal, in I.A.

No. 1133 of 2005 in O.S. No. 41 of 2005.

2. The revision petitioners are the petitioners therein and defendants in the suit. The respondents herein are the respondents in I.A. No. 1133 of

2005 and the plaintiffs in O.S. No. 41 of 2005. The respondents filed the suit for declaration that they are absolute owners of the suit schedule

properties and for delivery of physical possession of the suit properties to the plaintiffs and for costs of the suit. I.A. No. 1133 of 2005 was filed

requesting the court to reject the plaint. That was resisted by filing a counter by the plaintiffs and eventually under the impugned order the

application came to be dismissed.

3. The grounds set forth inter alia in the affidavit filed in support of I.A. No. 1133 of 2005 are firstly that the plaint does not disclose any cause of

action; and secondly, the plaintiffs ought to have filed a counterclaim in the suit O.S. No. 16 of 2005 filed by the defendants against the plaintiffs,

instead, filed the present suit and therefore it was barred under Order VIII Rule 6-A (4) of C.P.C.

4. Insofar as first objection is concerned it has been averred inter alia in the affidavit thus.

It is to submit that the plaintiffs herein who are the defendant Nos. 1 and 2 in O.S. No. 16 of 2005 on the file of this Hon"ble court at no point of

time were actually in prior possession of the suit scheduled lands. It is pertinent to note that the plaintiffs herein have not specifically disclosed in

their "cause of action" the statutorily required date of "discontinuance of possession" of plaintiffs herein from the suit scheduled lands. Hence so,

due to non-disclosure of date of "discontinuance of possession" from the suit scheduled land, by the plaintiffs herein the cause of action the suit is

not maintainable and bad in the eye of law.

It may be mentioned here that recovery of possession is only a consequential relief. The main relief is being the relief of declaration that the plaintiffs

are the owners of the property in dispute. The suit O.S. No. 16 of 2005 was filed by the defendants for declaration that the defendants obtained

sale deeds by misrepresentation and therefore they were not valid and for consequential relief of permanent injunction. Presumably, in view of the

said suit, the plaintiffs had to file a regular suit for declaration of title.

5. By means of a short order the court below, advertng to both the contentions, dismissed the application holding that filing of counter-claim is

optional and is not sine qua non and that as per the Article 65 of the Limitation Act, the question of limitation was mixed question of law and fact

and is got to be decided during the course of trial in the suit.

6. The court ought to have rendered a detailed and a considered order having regard to the two questions raised. Perhaps, on the assumption that

the application filed by the defendants is frivolous, the court passed a short order. Anyhow, there is nothing to interfere with the said orders for the

following reasons:

Obviously, by means of three sale deeds executed on an even date viz., 16-11-1993 under sale deed Nos. 11/94, 112/94 and 113/94 the

property was said to have been conveyed to the respondents herein by the revision petitioners for a valid consideration of Rs. 2,30,000/-. On an

application filed by them, their names are mutated in the revenue records and pattadar passbook was issued. The defendants questioning the same

filed a petition and this court dismissed it. Then they filed suit O.S. No. 16 of 2005 on the file of the Senior Civil Judge, Gadwal, for declaration

that the sale deeds executed by them are inoperative and not binding on them. In view of the said suit, subsequently, it appears the defendants in

that suit filed a suit O.S. No. 41 of 2005 for declaration that they are the owners. Merely because the court (sic. Code) provides for filing counter-

claim for the suit filed by the opposite party, that will not automatically operate as bar for filing an independent suit. That procedure is only to

facilitate the parties to have the dispute settled in the self same suit. There has been no statutory bar under the provisions of Order VIII Rule 6

precluding the defendants therein from filing an independent suit. The reasoning, thus, given by the lower court is correct.

Insofar as second ground mentioned inter alia is that appears is not the ground taken by the revision petitioners in the affidavit. As can be seen from

para 3, which is herein above extracted, the ground taken inter alia is ""no cause of action."" According to the applicants, the "date of discontinuance

of possession" has not been specifically mentioned in the plaint. The cause of action as mentioned in the suit is not maintainable. In the cause of

action para mentioned in the plaint it is averred thus.

The cause of action for the suit arose on 16-11-1993 when the defendants executed sale deeds conveying the suit schedule properties in favour of

the plaintiffs. The defendants filed suit in O.S. No. 16 of 2005 on the file of the Senior Civil Judge, Gadwal on 15-4-2005 setting up title in

themselves and seeking for declaration that the sale deeds are inoperative, sham and nominal, and still continues and the plaintiffs are filing this suit

within limitation as per provision of law.

It is obvious that they have not mentioned as to when the plaintiffs were dispossessed or since what date the defendants have been in possession of

the schedule land. But they pertain to the details of the cause, in strict sense, it cannot be said that there has been no cause of action in the plaint to

file the suit.

7. Order VII Rule 11 CPC is a provision, which deals with the rejection of the plaint. Clause (a) thereof shows that when the plaint does not

disclose a cause of action, the plaint can be rejected. As can be seen in the cause of action of the plaint extracted herein, the main cause of action

for filing the suit for declaration of the title has clearly been mentioned. Therefore, it is not a case, which warrants rejection of the plaint.

8. learned Counsel for the revision petitioners seeks to place reliance on a judgment of the Apex Court in N.V. Srinivasa Murthy and Others Vs.

Mariamma (dead) by Proposed LRs. and Others, . That was obviously a frivolous suit. The suit was barred by limitation under the provisions

under Order II Rule 2 C.P.C. In order to avoid the bar of limitation by camouflage in the pleading that suit had been filed for declaration of title

and for permanent injunction in respect of a property claimed to have been conveyed to them under an oral agreement of sale. The facts in the

instant case are entirely different and the decision has no application.

9. For the above reasons, the revision fails and is dismissed. But under the circumstances, no separate order as to costs.