

## G. Saroja Vs B. Padma Bai

**Court:** Andhra Pradesh High Court

**Date of Decision:** Nov. 13, 2003

**Acts Referred:** Civil Procedure Code, 1908 (CPC) – Order 14 Rule 2, Order 14 Rule 2(2), Order 7 Rule 11

**Citation:** (2004) 1 ALD 565

**Hon'ble Judges:** D.S.R. Varma, J

**Bench:** Single Bench

**Advocate:** K. Sitaram, for the Appellant; J.V.M.V. Prasad, for the Respondent

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

D.S.R. Verma, J.

Heard both sides.

2. This civil revision petition is directed against the order and decree, dated 4-1-2003, passed by the II Additional Junior Civil Judge, Kurnool,

allowing the application in IA No. 1515 of 2002 in O.S. No. 90 of 2002, directing both the parties to adduce evidence on the preliminary issue.

3. The petitioner is the plaintiff and the respondent is the defendant. The suit is filed for declaration of title and possession.

4. For the sake of convenience, the parties will be referred to as arrayed in the suit.

5. From the averments of plaint, it could be seen that the plaintiff contends that she entered into an agreement of sale, dated 10-10-2000, with one

Smt. Vijaya Lakshmi; that the said Vijaya Lakshmi died subsequently without performing her obligation under the said agreement of sale. It is also

admitted that she died issueless and she has no other legal representatives also. It is also the averment in the plaint that subsequently the plaintiff

came to know that the defendant has purchased the suit schedule property under a registered sale deed, dated 23-12-1999. After coming to know

of this fact, the present suit has been instituted by the plaintiff on the ground that Smt. Vijaya Lakshmi died issueless and she has no other legal

representatives. Hence, the suit is filed for declaration of title and possession.

6. The defendant has denied all the averments in the plaint.

7. The prime contention of the defendant appears to be that the suit is not maintainable, primarily on the ground that a suit ought to have been filed

against the person with whom the plaintiff had entered into an agreement of sale seeking specific performance. Merely on the ground that a person

who entered into an agreement was no more, the present suit cannot be filed against the defendant inasmuch as the defendant has got the right of

title to the suit schedule property under a registered sale deed. It is also pointed out by the defendant that the plaintiff was basing her case on an

unregistered and unstamped agreement of sale. Hence, the present application in I.A. No. 1515 of 2002, filed under Order 14 Rule 2(b) of the

CPC requesting the Court below to decide the question of maintainability of suit as a preliminary issue.

8. It is also not in dispute that the issues have already been framed and the issue of maintainability of suit is one among them. The Court below felt

it expedient to decide the issue of maintainability of suit as a preliminary issue in order to avoid unnecessary litigation and to save the time of the

Court.

9. In view of the above facts, it is necessary to look into the provisions of Order 14 Rule 2(a) and (b) of the Code of Civil Procedure, which are as

under:

Rule 2: Court to pronounce judgment on all issues :--(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall,

subject to the provisions of Sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of the opinion that the case or any part thereof may be disposed of

on an issue of law only, it may try that issue first if that issue relates to--

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force.

10. The said provision makes it clear that the general rule is that the Court shall pronounce the judgment on all issues but subject to Sub-rule (2). In

other words, Clause (a) and (b) of Sub-rule (2) are the exceptions to the general rule and the Court below can decide two issues as preliminary

issues, firstly the aspect of jurisdiction and secondly the aspect of bar to the suit created by any law for the time being.

11. Admittedly, the question of jurisdiction does not arise in the instant case. The only question that arises for consideration is whether the Clause

(b) of Sub-rule (2) is applicable in the present facts and circumstances of the case in order to decide the issue of maintainability of the suit as a

preliminary issue.

12. In this context, it is relevant to look into the provisions of Order 7 Rule 11 of the Code of Civil Procedure, under which a plaint can be

rejected, which are as under:

Rule 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 written 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 for 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.

13. Now, it is necessary to examine the averments made in the plaint once again.

14. As already recorded, it is the specific case of the plaintiff that she entered into an agreement of sale, dated 10-10-2000, with one Smt. Vijaya

Lakshmi. It is the admitted case of the plaintiff that she came to know subsequently that the defendant had purchased the suit schedule property

from her vendor under a registered sale deed on 23-12-1999 itself.

15. It is contended by the learned Counsel for the plaintiff that in normal course, when an agreement of sale was entered into and the property was

not conveyed as per the terms and conditions of the agreement, a suit for specific performance has to be instituted. But, in the instant case, there is

no other party against whom a suit for specific performance has to be instituted nor there are any legal representatives of the said person since no

more. Therefore, it is obvious that the relief in the suit had been moulded as a suit for declaration of title and possession.

16. Another specific averment in the plaint is that the defendant got the registered sale deed in her favour fraudulently, in which event the

appropriate relief that could and should be sought is to set aside the said registered sale deed alleged to have been executed by the vendor of the

plaintiff on the ground of fraud but no such relief was sought and on the contrary simply the plaintiff sought the reliefs of declaration of title and

possession.

17. Another significant factor brought to the notice of this Court is that there is no averment in the plaint that the possession of suit schedule

property was delivered to the plaintiff by virtue of the agreement of sale. On the other hand, admittedly, the defendant has in possession of the suit

schedule property.

18. Further, it is contended by the learned Counsel for the defendant that mere agreement of sale does confer any right on the plaintiff. To maintain

a suit for declaration of title and possession consideration and delivery of possession are to be essentially established. On the contrary, it is an

admitted fact that the defendant had purchased the suit schedule property under a valid registered sale deed and she has been in possession.

Therefore, the presumption is that the title has been passed on to the defendant.

19. Another momentous factor on record and as pointed out by the learned Counsel for the defendant is that the registered sale deed of the

defendant precedes the agreement of sale and obviously the possession had already been delivered to the defendant as per the plaint averments.

20. For the foregoing reasons, it is vehemently contended by the learned Counsel for the defendant that the suit had been filed only on frivolous

grounds and that the Court below was justified in passing the impugned judgment.

21. Now, the question that falls for consideration is whether the plaint can be rejected on the basis of the very averments in the plaint after deciding

the question as regards the maintainability of the suit as frivolous and vexatious ?

22. As already pointed out, the plaint can be rejected if the conditions mentioned under Order 7 Rule 11 are not complied. But, the Court below

can decide an issue as a preliminary issue under two circumstances mentioned under Order 14 Rule 2 viz., (a) the jurisdiction of the Court, or (b) a

bar to the suit created by any law for the time being in force.

23. In such circumstances, in view of the Clause (b) of Sub-rule (2) of Rule 2 of Order 14, a bar to the suit created by any law has to be

established in order to decide an issue as a preliminary issue.

24. Yet, another question that arises is as to whether, when a suit has been instituted, the Court below has to necessarily follow the entire

procedure and conduct trial and deliver the judgment or can reject such a suit if the same is, prima facie, found to be a frivolous one.

25. The Supreme Court in T. Arivandandam Vs. T.V. Satyapal and Another, , held as follows:

The Munsif must remember that if on a meaningful -not formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not

disclosing a clear right to sue, he should exercise his power under Order-VII Rule-11 C.P.C., taking care to see that the ground mentioned therein

is fulfilled. And if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly

under Order-X C.P.C., irresponsible. 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.

26. No doubt, the Supreme Court time and again held that as a general rule all the issues have to be decided during the trial only. All those

decisions are unexceptionable. But, the view expressed by the Supreme Court in the decision, referred to supra, if read conjointly with other

established precepts, the following would emerge:

27. Firstly, all the issues shall be decided by the Trial Court during the trial only, and secondly only the issues touching the aspect of jurisdiction or

the bar under any law can be decided as preliminary issues; and thirdly to test the statutory bar under Clause (b) of Sub-rule (2) of Rule 2 of

Order 14 can be decided again on the touchstone of Order 7 Rule 11, in case, the suit appears to be totally frivolous and vexatious.

28. In case, the trial Court found that the suit is wholly frivolous on the basis of the very averments in the plaint itself, even without taking into

consideration the averments made in the written statement, rejection or the same is permissible, if need be, by enhancing the scope of Order 7 Rule

11.

29. Undisputedly, all these issues have been framed in the instant case and the maintainability of the suit is one among them.

30. Whether the suit is frivolous or not on the face of it can be decided by the Trial Court to avoid arduous procedure for trial and without

subjecting the defendant/s to unnecessary procedure of trial if the averments in the plaint are found to be totally vexatious and frivolous.

31. But, it is to be remembered that this jurisdiction of the Trial Court has to be exercised in rare and exceptional circumstances only, when the

Court feels that the suit is totally vexatious and frivolous even if all the averments in the plaint are accepted in toto, does not disclose any clear right

to sue and not possible to grant any relief.

32. For the foregoing reasons and in the light of the decision of the Supreme Court, referred to above, I do not find any illegality or irregularity in

the impugned order of the Court below in allowing the present application in I.A. No. 1515 of 2002 filed by the defendant to decide the

maintainability of the suit as a preliminary issue.

33. However, it is made clear that the Court below should examine all the necessary material before coming to any conclusion as regards the

maintainability of the suit uninfluenced by any of the observations made by this Court in the present civil revision petition.

34. The civil revision petition fails and is liable to be dismissed.

35. In the result, the civil revision petition is dismissed, at the stage of admission. However, there shall be no order as to costs.