

*** THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
&**

***THE HON'BLE SRI JUSTICE MAHESWARA RAO
KUNCHEAM**

+ A.S. No.409 OF 2025

% 08.10.2025

Gummadi Usha Rani &
another

.....Appellants

And:

\$ Guduru Venkateswara Rao
and others

....Respondents.

!Counsel for the appellants : Sri A. Syam Sundar Reddy

^Counsel for the respondents : ---

<Gist:

>Head Note:

? Cases referred:

- 1.(2025) 4 SCC 38
- 2.2025 LiveLaw (SC) 630
- 3.2025 LiveLaw (SC) 509
- 4.2024 (5) ALD 18 (SC)
- 5.AIR 2009 Uttarakhand 5
- 6.(2012) 1 SCC 656
- 7.2025 LiveLaw (SC) 382
- 8.AIR 2019 SC 3113
- 9.AIR Online 2024 AP 1122
- 10.(2024 SCC OnLine SC 3844)
- 11.(2017) 13 SCC 174
- 12.AIR Online 2024 AP 1122

HIGH COURT OF ANDHRA PRADESH

*** * * ***

A.S. No.409 OF 2025

DATE OF JUDGMENT PRONOUNCED: 08.10.2025

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

THE HON'BLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

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|--|--------|
| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals | Yes/No |
| 3. Whether Your Lordships wish to see the
fair copy of the Judgment? | Yes/No |

RAVI NATH TILHARI, J

MAHESWARA RAO KUNCHEAM, J

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE MAHESWARA RAO
KUNCHEAM
A.S. No.409 OF 2025

JUDGMENT: per the Hon'ble Sri Justice Ravi Nath Tilhari:

Heard Sri A. Syam Sundar Reddy, learned counsel for the appellants.

2. This appeal under Section 96 of the Code of Civil Procedure (CPC) has been filed by the plaintiffs challenging the order of rejection of plaint dated 06.05.2025, passed by the II Additional District Judge, Vijayawada in G.L.No.1148 dated 07.03.2025 at the stage of registration of the suit.

3. At that stage counsel for the plaintiffs was heard and the rejection was without issuing the notice to the defendant. Consequently, for the aforesaid reasons, we being of the view that the notice was not required to be issued to the defendant-respondents, dispensed with the notice of this appeal by order dated 22.09.2025 while reserving the judgment.

I. Facts:

4. The plaintiff-appellants submitted the plaint to institute the suit inter alia for declaration recovery of possession and permanent injunction, praying for the following reliefs:-

“X RELIEF:-

Therefore, the Hon'ble Court may be pleased to pass Decree and Judgment in favour of the Plaintiffs against the Defendants,

a. To declare that the Plaintiffs are the absolute owners of the Plaint 'B' Schedule Properties by holding that registered sale deed dt.26-02-1996, vide Doc No.354/1996 on the file of SRO, Ibrahimpatnam, created by 3rd Defendant in favour of 5th Defendant, subsequent G.P.A. under registered GPA dt.06-03-2007, vide Doc. No. 1454/2007 on the file of SRO, Ibrahimpatnam, the registered sale deed dt.28-03-2007, vide Doc. No. 1987/2007 on the file of SRO, Ibrahimpatnam, executed by 5th Defendant through her GPA in favour of 6th Defendant in respect of Item No. 1 of Plaint 'B' Schedule Property, registered, sale deed dated 22.03.1996 vide Doc.No.518/1996 on the file of SRO, KAMARA created by 4 Defendant in favour of 7th Defendant in respect of Item No.2 in Plaint 'B' Schedule Property are null and void and they shall not bind the Plaintiffs.

b. Consequentially recovery of possession of Plaint 'B' Schedule Properties from the Defendants 5 to 7.

c. To declare that the 1st Plaintiff is the absolute owner of Plaint 'C' Schedule Properties by holding that the registered sale deed created by the 3rd Defendant in favour of 8th Defendant dt. 13-05-1996, vide Doc. No.843/1996 on the file of SRO, Ibrahimpatnam in respect of Item No. 1 of Plaint 'C' Schedule Property, the document executed by the 8th Defendant in favour of 9th defendant .01-02-2011, vide Doc.No.2213/2011 on the file of SRO, Ibrahimpatnam in respect of Item No.1 of Plaint 'C' Schedule Property registered sale deed dt. 18-11-

2000, vide Doc. No.4122/2000 on the file of SRO, Ibrahimpatnam, created by the Defendants 1 & 2, represented by 4th Defendant in respect of Item No.2 of Plaint 'C' Schedule Property in favour of Defendants 12 & 13, the registered sale deed dt 20-05-1996, vide Doc. No.925/1996 on the file of SRO, Ibrahimpatnam, created by the Defendants 1 & 2, represented by 4th Defendant in respect of Item No.3 of Plaint 'C' Schedule Property in favour of the 10th Defendant and registered sale deed dt. 10-12-2003, Doc.No.6070/2003 on the file of SRO, Ibrahimpatnam, created by 10th Defendant in favour of 11th Defendant is null and void and they shall not bind the right, title, interest of the 1^a Plaintiff.

d. Permanent Injunction restraining the Defendants 5 to 7, their men, agents, representatives from alienating or creating any 3rd party interest in any manner whatsoever in respect of Plaint 'B' Schedule Properties.

e. Permanent injunction restraining the Defendants 8 to 13, their men, agents, representatives from alienating or creating any 3rd party interest in any manner whatsoever in respect of Plaint 'C' Schedule Properties.

f. Permanent Injunction restraining the Defendants 8 to 13, their men, agents, representatives from interfering with the peaceful possession and enjoyment of Plaint 'C' Schedule Properties by the Plaintiffs.

g. Grant cost of the suit.

h. Grant such other relief or relieves as the Hon'ble Court may deem fit and proper under the circumstances of the case.”

Objection:

5. On 05.03.2025, the office of the learned II Additional District Judge, Vijayawada (trial court) raised the objection.

“How the suit is within limitation? Explain”.

Representation:

6. The plaintiffs' advocate represented on 07.03.2025 that:

“the plaintiff has clearly asserted in the column of limitation to the plaint as to the limitation. The suit being comprehensive in nature, such as declaration and recovery of possession. In fact, there is no law prescribed for seeking of recovery of possession by a true owner. Though, the law contemplated under Article 64 & 65 is presumed to be the limitation for recovery of possession. If it is presumed that the limitation prescribed under Article -64 & 65 is correct for seeking recovery of possession. Suit of the plaintiff is within the limitation as outer limit of limitation would prevail than the inner limit of limitation. Therefore, the suit is perfectly within the limitation.

The issue of limitation is a mixed question of fact and mixed question of law. While registering the plaint, it is out of the court to look into the prima facie limitation basing on the assertion of the plaint.

Therefore, it is prayed to register the suit. If the Chief Ministerial Officer is not satisfied with the above explanation, the matter may be placed before the Court.”

Order date 06.05.2025

7. The matter was placed before the II Additional District Judge, Vijayawada for orders. Plaintiffs’ counsel was heard

relating to the objection about the limitation for the suit and by the impugned order dated 06.05.2025, the learned II Additional District Judge, Vijayawada rejected the plaint.

8. Initially, challenging the impugned order of rejection of plaint, the appellants preferred C.R.P.No.1440 of 2025, which was got dismissed as withdrawn with liberty to file appeal, as the order of rejection of plaint is deemed to be a decree under Section 2(2) of Code of Civil Procedure (C.P.C) and therefore being appellable.

II. Submissions of learned counsel for the appellants:

9. Learned counsel for the appellants submitted that the suit was instituted for declaration of title and recovery of possession. They prayed to declare them as absolute owners, after holding the registered sale deeds and the subsequent G.P.A, etc in favour of the defendant(s) with respect to different items of the plaint schedule properties as null and void and consequently for recovery of the possession of the specified plaint schedule properties, in terms of the prayer made. So, he submitted that in a suit of the nature as the present one, there shall be no period of limitation. It is only after the defendants' appearance and taking the plea of adverse possession, that the period of limitation would

be 12 years from the date of adverse possession, which, then would require consideration based on evidence. He submitted that the limitation in the present case, was not a pure question of law and it could not be said that the suit was barred by limitation at this stage, reading the plaint averments. The learned trial court ought to have registered the suit and after the appearance of the defendants if the occasion had so arisen, the plea for rejection of the plaint under Order 7 Rule 11 ought to have been considered.

10. Learned counsel for the appellants placed reliance on the following judgments:

1. N. Thajudeen vs. Tamil Nadu Khadi and Village Industries Board (Civil Appeal No.6333 of 2013 on the file of Hon'ble Supreme Court of India) decided on 24.10.2024.
2. Central Bank of India and another vs. Prabha Jain and others¹
3. Vinod Infra Developers Ltd vs. Mahaveer Lunia and others²
4. P. Kumarakurubaran vs. P. Narayana and others³
5. Hussain Ahmed Choudhury and others vs. Habibur Rahman (dead) through Lrs & others. (Civil Appeal No.5470/2025 on the file of the Hon'ble Supreme Court of India)

¹ (2025) 4 SCC 38

² 2025 LiveLaw (SC) 630

³ 2025 LiveLaw (SC) 509

6. Thankamma George v. Lilly Thomas and another⁴
7. Smt Neelam Kumari and another vs. U.P. Financial Corporation⁵
8. Suraj Lamp and Industries Private Limited vs. State of Haryana and another⁶
9. Smt Uma Devi and others vs. Sri Anand Kumar and others⁷
10. Sopanrao and another vs. Syed Mehmood and others⁸

11. Learned counsel for the appellants further submitted that the appellants are entitled to refund of the court fee paid on memo of appeal because rejection of plaint is illegal, and the plaint deserves to be received. He placed reliance in **Veluru Prabhavathi vs. Sirigireddy Arjun Reddy**⁹.

III. Points for determination:

12. The points involved for consideration and determination are as under:

A. Whether the rejection of the plaint at the stage of registration, under Order VII Rule 11 CPC, on the ground of the 'suit barred by limitation' and 'no cause of action' is legally justified?

⁴ 2024 (5) ALD 18 (SC)

⁵ AIR 2009 Uttarakhand 5

⁶ (2012) 1 SCC 656

⁷ 2025 LiveLaw (SC) 382

⁸ AIR 2019 SC 3113

⁹ AIR Online 2024 AP 1122

B. Whether the appellants are entitled for refund of Court fee paid on this appeal?

IV. Analysis:

13. We have considered the submissions and perused the material on record.

Point-A:

14. The reasoning and the ground for rejection of the plaint is in paras 4 and 6 of the judgment which are reproduced as under:

“4. Perusal of the documents filed by the plaintiff with the plaint i.e., judgment dated 13.02.2023 in O.S.372/2015, and the plaint filed by the defendants 12 and 13 against plaintiffs, plaint filed by 2nd plaintiff against 13th defendant, statement of the 13th defendant in O.S.1084/2018, suit filed by the 13th defendant against the plaintiffs 1 and 2 and 10th defendant in O.S.80/2019, and the statement of the present plaintiffs as the defendants 1 and 2 and statement of 10th defendant as 3rd defendant in O.S.80/2019, and the sale deeds said to have been executed by the parties to the present suit, clearly establish that in O.S.372/2015 filed on 13.10.2015 by the plaintiffs for declaration of the 2nd plaintiff as absolute owner of 936 Sq. yards out of 2420 Sq yards i.e., Ac.0.50 cents which is described as item No.1 of 'A' schedule property, show that all the documents in respect of the plaintiffs' properties in an extent of 1638 were executed during the years 1995 to 2003 after getting layout plan approved by VGTM laid in total extent of Ac.1.99 cents of i.e., items 1 and 2 of 'A' schedule property in which the 1st plaintiff got net site of 1366 Sq yards and the defendants 1 and 2 got 4020 Sq. yards. The same was also

pleaded in the written statements filed by the 3rd defendant in that suit by supplying dates, document numbers of the sale deeds and the names of the purchasers, and the court on merits dismissed the suit holding that the 1st plaintiff sold 1638 Sq. yards under 06 sale deeds from the year 1995 to 2003. Having executed GPA dated 30.10.1995 and lost the suit in O.S.372/15 on the file of XII Additional District Judge, Vijayawada, the plaintiffs again wanted to initiate fresh round of litigation involving the parties who purchased the properties from the purchasers from the 1st plaintiff and defendants 1 and 2 out of the plots laid out as per approved plan by combining both the items 1 and 2 of 'A' schedule property which took place during the years 1996 to 2003.”

“6. In this case, even as per the pleadings, the documents executed in respect of item No.1 of 'A' schedule property i.e., sale deeds dated 25.02.1999, two sale deeds 26.02.1996, 22.03.1996, 13.05.1996, 20.05.1996, are registered documents, and the registration of document relating to immovable property give notice to the whole world that such a documents have been executed. It is well settled that the trial Court must remember that if on a meaningful and not 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 the power under Order VII Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order X of the Code. Hence, as held by the Hon'ble Supreme Court in Smt. Uma Devi (supra), even on going through the pleadings, it can be safely assumed that the plaintiffs got notice of those documents, but, kept quite without filing any suit within the prescribed period to challenge the

same. But, they filed this by creating an illusory cause of action with clever pleading ignoring their failure to initiate suit within the period of limitation from the dates of execution of registered sale deeds, which now the plaintiffs wanted to challenge that too after dismissal of their suit in O.S.372/2015 by XII Additional District Judge, Vijayawada, and it cannot be allowed in the interest of justice. Hence, I find that the suit of the plaintiffs is barred by limitation and without any cause of action.”

15. From the aforesaid paragraphs, it is evident that according to the learned II Additional District Judge, the plaintiffs got the notice of the documents executed in respect of Item No.I of ‘A’ Schedule property which were registered documents, as the registration of documents give notice to the whole World, but the plaintiffs kept quite, without filing any suit within the period prescribed to challenge the same. The suit was being filed by creating the illusion of a cause of action with cleaver pleadings ignoring their failure to initiate suit within the period of limitation from the dates of execution of the registered sale deeds.

16. The learned II Additional District Judge further observed that the suit was being filed after dismissal of the previous O.S.No.372 of 2015 by XII Additional District Judge, Vijayawada. So, the suit was barred by limitation and without any cause of action.

17. We first consider the ground of rejection of the plaint that the suit was barred by limitation.

18. In **N. Thajudeen** (supra), the Hon'ble Apex Court held that the limitation for a suit for declaration is provided under part-III of the Schedule. It is governed by Articles 56-58 of the Schedule to the Limitation Act. Under all the aforesaid three Articles, the limitation for a suit for declaration is three years. The limitation provided under Articles 56 and 57 of the Schedule to the Limitation Act is in respect to declaration regarding forgery of an instrument issued or registered and validity of the adoption deed. Article 58 of the Schedule to the Limitation Act prescribes the limitation for decree of declaration of any other kind and therefore, the suit for declaration of title would essentially fall under Article 58 of the Schedule to the Limitation Act and the limitation would be three years from the date when the right to sue first accrues. The Hon'ble Apex Court further held that when in a suit for declaration of title, a further relief is claimed in addition to mere declaration, the relief of declaration would only be an ancillary one and for the purposes of limitation, it would be governed by the relief that has been additionally claimed. The further relief claimed in the suit was for recovery of possession

based upon title and as such it was held that the limitation would be 12 years in terms of Article 65 of the Schedule to the Limitation Act. The time from which period begins to run under Article 65, is when the possession of the defendant becomes adverse to the plaintiff, the Hon'ble Apex Court also referred to **C. Mohammad Yunus vs. Syed Unnissa and others** (AIR 1961 SC 808) in which it was laid down that a suit for declaration of title to immovable property would not be barred so long as the right to such a property continues and subsists. When such right continues to subsist, the relief for declaration would be a continuing right and there would be no limitation for such a suit.

19. Paras 21 to 24 of **N. Thajudeen** (supra) are reproduced as under:

"21. The limitation for a suit for declaration is provided under Part III of the Schedule to the Limitation Act, 1963. It is governed by Articles 56-58 of the Schedule to the Limitation Act. Under all the aforesaid three Articles, the limitation for a suit for declaration is three years. The limitation provided under Articles 56 and 57 of the Schedule to the Limitation Act is in respect to declaration regarding forgery of an instrument issued or registered and validity of the adoption deed. Article 58 of the Schedule to the Limitation Act prescribes the limitation for decree of declaration of any other kind and therefore, the suit for declaration of title would essentially fall under Article 58 of the Schedule to the Limitation Act and the limitation would be three years from the date when the right to sue first accrues.

22. In the case at hand, the suit is not simply for the declaration of title rather it is for a further relief for recovery of possession. It is to be noted that when in a suit for declaration of title, a further relief is claimed in

addition to mere declaration, the relief of declaration would only be an ancillary one and for the purposes of limitation, it would be governed by the relief that has been additionally claimed. The further relief claimed in the suit is for recovery of possession based upon title and as such its limitation would be 12 years in terms of Article 65 of the Schedule to the Limitation Act.

23. In **C. Mohammad Yunus vs. Syed Unnissa And Ors** (AIR 1961 SC 808), it has been laid down that in a suit for declaration with a further relief, the limitation would be governed by the Article governing the suit for such further relief. In fact, a suit for a declaration of title to immovable property would not be barred so long as the right to such a property continues and subsists. When such right continues to subsist, the relief for declaration would be a continuing right and there would be no limitation for such a suit. The principle is that the suit for a declaration for a right cannot be held to be barred so long as Right to Property subsist.

24. Even otherwise, though the limitation for filing a suit for declaration of title is three years as per Article 58 of the Schedule to the Limitation Act but for recovery of possession based upon title, the limitation is 12 years from the date the possession of the defendant becomes adverse in terms of Article 65 of the Schedule to the Limitation Act. Therefore, suit for the relief of possession was not actually barred and as such the court of first instance could not have dismissed the entire suit as barred by time."

20. In **Vinod Infra Developers Ltd (supra)**, it was reiterated that the rejection of plaint under Order 7 Rule 11 CPC is permissible only when the plaint, on its face and without considering the defence, fails to disclose a cause of action, or is barred by any law or is undervalued, or is insufficiently stamped. At this preliminary stage, the court is required to find its examination strictly to the averments made in the plaint and not venture into the merit or veracity of the claims. If any triable

issues arise from the pleadings, the suit cannot be summarily rejected. In **Vinod Infra Developers Ltd** (supra), the Hon'ble Apex Court further observed that the factual disputes that require adjudication during trial cannot be resolved at the stage of considering an application under Order VII Rule 11 CPC.

21. In **P. Kumarakurubaran** (supra), the Hon'ble Apex Court held that the issue as to whether "the appellant had prior notice or reason to be aware of the transaction at an earlier point of time, or whether the plea regarding the date of knowledge is credible, are all matters that necessarily require appreciation of evidence. At the preliminary stage, the averments made in the plaint must be taken at face value and assumed to be true. The Hon'ble Apex Court held that when the question of limitation involves disputed facts or things on the date of knowledge, such issues cannot be decided at the stage of Order 7 Rule 11 C.P.C. Therefore, rejection of plaint on the ground of limitation without permitting the parties to lead evidence is legally unsustainable.

22. In **Thankamma George** (supra), the plea was taken that the suit was filed beyond the limitation period and should have been dismissed. The Hon'ble Apex Court held that the limitation

was a question of law and fact. The period of limitation and the time from which the period begins to run, depends on the Article in the Schedule appended to the Limitation Act. With respect to Article 58 which used the expression “when the right to sue first accrues”, the Hon’ble Apex Court observed that the starting point for the limitation in the case of setting aside sale deeds has two limbs. The date of execution and the date of knowledge. There would be no difficulty in applying the period of limitation, expiring three years from the date of execution, provided that the knowledge on the date of registration was established, but unless it was clearly established as a fact it could not be inferred, and the limitation would not start running from the date of the execution of the documents.

23. In **Central Bank of India** (supra), the Hon’ble Apex Court held that there cannot be any partial rejection of the plaint under Order 7 Rule 11 C.P.C. It was held that if one relief is not barred and the other relief is barred, even then the court must not make any observation with respect to the relief barred by law.

24. In **Hussain Ahmed Choudhury** (supra), the Hon’ble Apex Court held that where the executant of a deed wants it to be

annulled, he has to seek cancellation of the deed under [Section 31](#) of the S.R.Act, 1963. But, if a non-executant seeks annulment of a deed, he has to only seek a declaration that the deed is invalid, or non est, or illegal or that it is not binding on him. The Hon'ble Apex Court held that Section 34 of the Specific Relief Act, 1963 merely gives statutory recognition to a well recognised type of declaratory relief and subjects it to a limitation, but it cannot be deemed to exhaust every kind of declaratory relief or to circumscribe the jurisdiction of courts to give declarations of right falling outside Section 34 of Specific Relief Act, 1963

25. We are of the view that in this case considering the plaint pleadings, it cannot be said that the period of limitation is a pure question of law. It is a mixed question of law and fact which could not be considered for rejection of plaint as 'barred by law' under Order 7 Rule 11 CPC. It required evidence and proof during trial to determine the period of limitation as also the time from which the limitation would begin to run.

26. The learned II Additional District Judge placed reliance in the case of **Smt Uma Devi** (supra) and observed that in the present case as per the pleadings, the documents executed in

respect of Item No.I of 'A' schedule property that is the sale deeds dated 25.02.1999, 13.05.1996 and 26.02.1996, were the registered documents and the registration gives notice to the whole world. In other words, the learned II Additional District Judge, taking the date of registration as the starting point of limitation and considering the same as the date of knowledge to the plaintiffs, held that the suit was barred by limitation and rejected the plaint.

27. In **Smt Uma Devi** (supra), the defendants filed an application under Order 7 Rule 11 CPC in a suit for partition on the ground that the suit was not maintainable as it was barred by limitation. The application was allowed and the suit was dismissed. The appellate court found that there were triable issues that required consideration. There, it was submitted on behalf of the plaintiff respondents that, the suit was only for partition filed in the year 2023 and was within the limitation period as the limitation would be counted from the date of knowledge of the sale deed. On examination of the pleadings it became evident that the plaintiff failed to address the crucial question of when the plaintiff became aware of the registered sale deeds. If they had prior knowledge of the sale deeds they failed to specify the exact

date of such knowledge. The partition had taken place way back in the year 1968 which was evident from the revenue record entries. The suit was filed in the year 1923 after a period of 55 years. In the meantime, many of the family members had executed registered sale deeds in the year 1978. The Hon'ble Apex Court held that a registered document provides a complete account of a transaction to any party interested in the property and applying the said principle of law, it was held that it could be assumed that the plaintiff's predecessors had notice of the registered sale deeds executed in the year 1978 flowing from the partition that took place way back in the year 1968. But, during their life time neither those sale deeds were challenged nor the partition was sought. The suit filed in the year 2023 was held to be prime facie barred by limitation, observing that the plaintiffs could not regain their rights after sleeping for about 45 years. There, there was previous oral partition in the year 1968 through a family settlement amongst the sons of one Boranna and the plaintiffs who filed the suit in the year 2023 were the grand children of one of the sons of Boranna. So, it was further held that there was no cause of action to file the suit for partition in view of the family settlement of 1968 amongst Boranna and his

sons when they did not raise any objections with respect to the registered sale deeds executed by many of them in the year 1978.

28. In **Smt Uma Devi** (supra), the Hon'ble Apex Court referred to its previous judgments in **Shri Mukund Bhavan Trust & others vs. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonle and another**¹⁰ and **Madanuri Sri rama Chandra Murthy vs. Syed Jalal**¹¹.

29. In the first case **Sri Mukund Bhavan** (supra), it was laid down that the question of the suit being barred by limitation could be decided at the time of trial as the question of limitation is a mixed question of law and facts. It was further held that though the question of limitation generally is a mixed question of law and facts, when upon meaningful reading of the plaint, the court can come to a conclusion that under the given circumstances, after dissecting the vices of clever drafting creating an illusion of cause of action, the suit is hopelessly barred the plaint can be rejected under Order VII Rule 11.

¹⁰ (2024 SCC OnLine SC 3844)

¹¹ (2017) 13 SCC 174

30. In the second case **Madanuri Sri Rama Chandra Murthy** (supra) it was held that the question as to whether the suit is barred by any law would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when, the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order VII Rule 11 of CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.

31. We are of the view that at this stage knowledge could not be imputed to plaintiffs only because of the registration of the sale deeds. At this stage only the plaint averments are to be considered and are to be taken as true and correct on their face value. A perusal of the plaint, inter alia, shows that in para-IV, the cause of action, the plaintiffs have given in detail as to when the cause of action arose for the first time and thereafter

continuously on different dates. In para –VIII Limitation, the plaintiffs stated that the 1st plaintiff was cross-examined on 15.12.2021 in O.S.No.372 of 2015, wherein she was posed certain questions, which lead the plaintiffs to investigate into the issue. In the 1st week of January, 2022, when the plaintiffs came to know that the defendants created, concocted void-abinitio documents without knowledge and consent of the plaintiffs. In the month of February, 2023, the defendants 6 and 7 occupied the plaint schedule properties. Hence, the claim of the plaintiffs was within the limitation.

32. So, in view of clear averments with respect to the cause of action, and limitation, i.e the date of knowledge of the void, abinitio documents, it could not be recorded by the learned II Additional District Judge that the suit was barred by limitation. Registration of a document no doubt is notice to the whole world but that can be rebutted by the person by proving the actual date of knowledge. When there was a specific averment in the plaint with respect to the suit being within the limitation from the date of the knowledge as stated therein, it was not a case for rejection of the plaint under Order 7 Rule 11 CPC at the stage of registration. The plea of limitation, the date of knowledge, and from what date

the period of limitation would begin to run, in the present case, was the subject matter of determination only on evidence, during trial and not at this stage of registration of plaint.

33. The learned II Additional District Judge has also not read the plaint as a whole. It is well settled in law in the various pronouncements of the Hon'ble Apex Court, including the one in **Smt Uma Devi** (supra), **Mukund Bhavan Trust** (supra) and **Madanuri Sri Rama Chandra Murthy** (supra) that, the relevant facts which need to be looked into for deciding the application are the averments of the plaint only and the plaint is to be read as a whole. There has to be a meaningful reading of the plaint. But, here, the entire plaint has not been read as a whole. There is no meaningful reading of the plaint. It is so evident from reading of the impugned judgment which completely missed the paras relating to cause of action and the limitation in particular.

34. Now we consider the other ground of rejection i.e. that the O.S.No.372 of 2015 was dismissed.

35. We are of the view that against the decree in O.S.No.372 of 2015, A.S.No.261 of 2023 is pending in the High Court.

36. Additionally, the plaintiff himself stated that those documents could not be challenged in O.S.No.372 of 2015 on the

advise of the previous counsel that those documents were void, abinitio and needed no challenge. The question which therefore required consideration was whether those documents required cancellation or being void abinitio did not so require, even if the plaintiffs acquired knowledge of those documents pending O.S.No.372 of 2015.

37. Further, whether the dismissal of O.S.No.372 of 2015 operated as a bar to institute fresh suit (under Order 2 Rule 2 C.P.C) or the decree in the said suit operated as res judicata, or 'no cause of action' to maintain the suit, or like questions, were those which were required to be considered after registration of the suit during trial. At this stage it could not be said that because of O.S.No.372 of 2015, the plaintiff had no cause of action and the plaint deserved rejection.

38. The question of the second suit whether barred by law under Order 2 Rule 2 C.P.C, cannot be decided under Order 7 Rule 11 at the preliminary stage of registration. As per Order 2 Rule 2 C.P.C every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action where the plaintiff omits to sue in respect of or intentionally relinquishes any portion of his claim, he shall not after words sue

in respect of the portion so omitted or relinquished. However, as per sub rule (3) of rule 2, the plaintiff may sue for the omitted relief in respect of same cause of action, with the leave of the Court. So, to reject the plaint, based on O.S.No.372 of 2015, it required determination:

- (a) If there was omission to claim the relief which the plaintiffs were entitled to claim in respect of the same cause of action;
- (b) If there was such an omission, whether the leave should or should not be granted to sue for such omitted relief;
- (c) If there was relinquishment of claim and
- (d) Whether such relinquishment was intentional.

All these questions are not pure questions of law but some are questions of fact and the other were questions of law and fact. The determination of such questions could be made during trial. The plaint could not be rejected under Order 7 Rule 11 CPC on the ground of O.S.No.372 of 2015, for no prayer/relief of cancellation or declaration of the documents being null and void, being made in the O.S.No.372 of 2015.

Point-B:

39. Learned counsel for the appellants submitted that the appellants are entitled for refund of the court fee paid in appeal, under Sections 63 and 64 of the A.P. Court Fee and Suits Valuation Act, 1956 (for short, the Act, 1956). He relied in **Veluru Prabhavathi** (supra).

40. Sections 63 and 64 of the Act, 1956 read as under:

“63. Refund in cases in rejection of plaint, etc., for delay –

(1) Where a plaint or memorandum of appeal is rejected on the ground of delay in its representation or where the fee paid on a plaint or memorandum of appeal is insufficient and the deficit fee is not paid within the time allowed by the Court, or the delay in payment of the deficit fee is not condoned and the plaint or memorandum of appeal is consequently rejected, the Court may, in its discretion, direct the refund to the plaintiff or the appellant, of the fee, either in whole or in part, paid on the plaint or memorandum of appeal which was rejected.

(2) Where a memorandum of appeal is rejected on the ground that it was not presented within the time allowed by the law of limitation, one-half of the fee shall be refunded.

64. Refund in cases of remand –

(1) Where a plaint or memorandum of appeal rejected by the lower Court is ordered to be received, or where a suit is remanded in appeal for a fresh decision by the lower Court, the Court making the order or remanding the appeal may direct the refund to the appellant of the full amount of fee paid on the memorandum of appeal; and, if the remand is on second appeal, also on the memorandum of appeal in the first appellate Court, and, if the remand is in Letters Patent Appeal, also on the memorandum of second appeal and memorandum of appeal in the first appellate Court.

(2) Where an appeal is remanded in Second Appeal or Letters Patent Appeal for a fresh decision by the lower appellate Court, the High Court

remanding the appeal may direct the refund to the appellant of the full amount of fee paid on the memorandum of Second Appeal if the remand is in Second Appeal, and of the full amount of fee paid on the Memorandum of Second Appeal and the Memorandum of Letters Patent Appeal if the remand is in Letters Patent Appeal: Provided that no refund shall be ordered if the remand was due to the fault of the party who would otherwise be entitled to a refund: Provided further that, if the order of remand does not cover the whole of the subject-matter of the suit, the refund shall not extend to more than so much fee as would have been originally payable on that part of the subject matter in respect whereof the suit has been remanded.”

41. A bare reading of the Section 63 of the Act, 1956 shows that where a plaint or memorandum of appeal is rejected on the ground of delay in its representation, the court may in its discretion direct the refund to the plaintiff or the appellant of the fee either in whole or in part paid on the plaint or memorandum of appeal which was rejected.

42. Section 64 of the Act, 1956 provides that where the plaint or the memorandum of appeal rejected by the lower court is ordered to be received, the court making the order may direct the refund to the appellant to the full amount of fee paid on the memorandum of the appeal.

43. In **Veluru Prabhavathi** (supra), the refund was ordered, after setting aside the rejection of the plaint on the ground of limitation under Order 7 Rule 11 CPC, and allowing the appeal and remanding to the trial court for fresh decision.

44. Para 16 of **Veluru Prabhavathi** (supra) is as under:

“16. POINT No.3: In view of findings in Point Nos.1 and 2 supra, the order of the trial Court rejecting the plaint is factually and legally unsustainable and liable to be set aside. So far as the prayer of learned counsel for the appellant for refund of court fees is concerned, Section 64 of the Andhra Pradesh Court-Fees and Suits Valuation Act, 1956 lays down that where a plaint or memorandum of appeal rejected by the lower Court is ordered to be received or where a suit is remanded in appeal for fresh decision by the lower Court, the court making the order or remanding the appeal may direct the refund to the appellant to the full amount of fee paid on the memorandum of appeal and if the remand is on second appeal, also on the memorandum of appeal in the first appellate Court and if the remand is in letters patent appeal, also on the memorandum of second appeal and memorandum of appeal in the first appellate Court. Since the order of the trial Court is set aside in this appeal, the appellant's request can be considered.

(1) Accordingly, this appeal is allowed and order dated 05.03.2024 in IA 10/2024 in OS No.87/2023 passed by learned VI Additional District Judge, Kadapa is set aside and the suit is restored to file with a direction to the trial Court to dispose of the suit on merits without being influenced by the observations made by this Court.

(2) The Registry is directed to refund the Court fee paid by the appellant in this appeal as per the procedure. No costs. As a sequel, interlocutory applications pending if any, shall stand closed.”

45. Since the present appeal is being allowed setting aside the order of the rejection of the plaint with direction to the learned trial court to receive the plaint and register the suit and to proceed as per law, the appellants are entitled for refund of the court fee paid on appeal.

V. Conclusions:

46. Thus, considered our conclusions are as under:

On Point-A: The plaint could not be rejected under Order 7 Rule 11 C.P.C at the stage of registration neither on the ground of 'barred by limitation' nor 'no cause of action'. The impugned order is legally unsustainable.

On Point-B: The appellants are entitled for refund of court fee paid on memo of this appeal, in view of Section 64 of the Andhra Pradesh Court Fees and Suits Valuation Act, 1956

47. Result:

In the result:

- i) The appeal is allowed. The order of rejection of plaint dated 06.05.2025, passed by the II Additional District Judge, Vijayawada in G.L.No.1148 dated 07.03.2025, is set aside.
- ii) The plaint shall be received and suit registered in the Court of II Additional District Judge, Vijayawada.
- iii) We direct the refund of the court fee paid on the memorandum of the appeal, to the appellants.
- iv) The refund shall be made in the bank account of any one the appellants, for which the appellants shall

duly furnish the bank account details, to the Registry
of this Court.

48. The Registrar (Judicial) shall ensure due compliance.
49. No order as to costs.

Consequently, the Miscellaneous Petitions, if any, pending
shall also stand closed.

RAVI NATH TILHARI,J

MAHESWARA RAO KUNCHEAM,J

Date: 08.10.2025.

Note:

L.R copy to be marked.

B/o.

Gk.

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE MAHESWARA RAO
KUNCHEAM

A.S. No.409 OF 2025

Date:08.10.2025.

Gk.