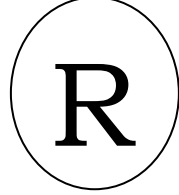


IN THE HIGH COURT OF KARNATAKA AT BENGALURU**DATED THIS THE 28TH DAY OF JUNE 2018****PRESENT****THE HON'BLE MR. JUSTICE H.G.RAMESH****AND****THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ****REGULAR FIRST APPEAL NO.1114/2016 (PAR)****BETWEEN:**

1. KANTHAMMA
AGED ABOUT 62 YEARS
DAUGHTER OF P.K. NARAYANA REDDY
2. P.N. KAMALAMMA
AGED ABOUT 58 YEARS
DAUGHTER OF P.K. NARAYANA REDDY
3. CHANDRIKA
AGED ABOUT 53 YEARS
DAUGHTER OF P.K. NARAYANA REDDY

ALL R/AT PARAPPANA AGRAHARA
ELECTRONIC CITY POST
BENGALURU – 560 100

...APPELLANTS

(BY MS.VANAJA VASANTHA KUMARI, ADVOCATE FOR
SRI S. NAGARAJ, ADVOCATE)

AND:

1. N. ANANDA KUMAR REDDY
AGED ABOUT 66 YEARS
SON OF N. KRISHNA REDDY
RESIDING AT NO.3423, 3RD CROSS
11TH MAIN, II STAGE INDIRANAGAR
BENGALURU – 560 038
2. B.S. VIDYA
AGED ABOUT 62 YEARS
WIFE OF RAMESH JOIS
R/AT NO.84/5, 8TH CROSS

WILSON GARDEN
BENGALURU-560 027

...RESPONDENTS

(BY SRI K. SREEDHAR, ADVOCATE FOR C/R1;
SRI M.B. CHANDRA CHOODA, ADVOCATE FOR R2)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF CPC PRAYING TO SET ASIDE THE ORDER DATED 05.04.2016 PASSED BY THE COURT OF THE 42ND ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE ON I.A.NO.37 IN O.S.NO.8068/2011 ETC.

THIS REGULAR FIRST APPEAL COMING ON FOR ADMISSION, THIS DAY, **H.G.RAMESH J.**, DELIVERED THE FOLLOWING:

JUDGMENT

H.G.RAMESH, J. (Oral):

1. *Whether Order VII Rule 11 of CPC permits partial rejection of a plaint or a plaint as a whole alone can be rejected? This is the question of law that requires determination in this appeal. The question is answered by holding that a plaint as a whole alone can be rejected and partial rejection of a plaint is not permissible in law.*

2. By consent of learned Counsel on both sides, the appeal is heard on merits and is being disposed of by this judgment. This appeal is by the plaintiffs and is directed against the order dated 05.04.2016 passed by the trial Court allowing IA No.37 filed by respondent No.1 (defendant No.23) under Order VII Rule 11 of CPC by partly rejecting the plaint in the suit in OS No.8068/2011 in

respect of suit schedule-H and J properties. Operative portion of the impugned order reads as follows:

"I.A.No.37 filed by defendant No.23 under Order 7 Rule 11 of CPC is hereby allowed.

Plaint is rejected in respect of suit schedule-H property.

Suit of the plaintiffs is not maintainable in respect of suit schedule-H and J properties against the defendants 23 and 26 and subsequently, suit of the plaintiffs against the defendants 23 and 26 in respect of suit schedule-H and J properties is dismissed.

Under the facts and circumstances, parties to bear their own costs."

3. Learned Counsel appearing for the appellants submits that the order of the trial Court in partly rejecting the plaint is clearly contrary to the law laid down by the Supreme Court in *Sejal Glass Ltd. v. Navilan Merchants Pvt. Ltd.* [AIR 2017 SC 4477] and therefore, the impugned order is liable to be set aside.

4. Learned Counsel appearing for respondent No.2 supported the impugned order by relying on a decision of this Court in *Smt. Lakshmi and Others vs. Smt. Neelamma and Others* [ILR 2015 KAR 5725] wherein this Court had rejected the plaint in respect of one of the suit properties. In other words, in the said case, this Court had partly rejected the plaint.

5. As already stated above, the question that arises for determination in this appeal is as to whether the trial Court is right in law in partly rejecting the plaint?

6. To answer the above question, it is relevant to refer to the law laid down by the Supreme Court in *Sejal Glass Ltd.* (AIR 2017 SC 4477); it reads as follows:

“**5.** In our view, the impugned judgment is wrong on principle. Order VII, Rule 11 of the Code of Civil Procedure, 1908 which reads as follows:

“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.”

What is important to remember is that the provision refers to the “plaint” which necessarily means the plaint as a whole. It is only where the plaint as a whole does not disclose a cause of action that Order VII, Rule 11 springs into being and interdicts a suit from proceeding.

6. It is settled-law that the plaint as a whole alone can be rejected under Order VII, Rule 11. In *Maqsd Ahmad v. Mathra Datt and Co.*, AIR 1936 Lahore 1021 at 1022, the High Court held that a note recorded by the trial Court did not amount to a rejection of the plaint as a whole, as contemplated by the CPC, and, therefore, rejected a revision petition in the following terms:-

"There is no provision in the Civil Procedure Code for the rejection of a plaint in part, and the note recorded by the trial Court does not, therefore, amount to the rejection of the plaint as contemplated in the Civil Procedure Code."

.....
11. If only a portion of the plaint, as opposed to the plaint as a whole is to be struck out, Order VI, Rule 16 of the CPC would apply. Order VI, Rule 16 states as follows:-

"16. Striking out pleadings.- The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading—

- a) which may be unnecessary, scandalous, frivolous or vexatious, or
- b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or
- c) which is otherwise an abuse of the process of the Court."

It is clear that Order VI, Rule 16 would not apply in the facts of the present case. There is no plea or averment to the effect that, as against the Directors, pleadings should be struck out on the ground that they are unnecessary, scandalous, frivolous, vexatious or that they may otherwise tend to prejudice, embarrass or delay the fair trial of the suit or that it is otherwise an abuse of the process of the Court."

(Underlining supplied)

7. As held by the Supreme Court in *Sejal Glass Ltd.* referred to above, a plaint as a whole alone can be rejected under Order VII Rule 11 of CPC. Therefore, rejection of a plaint in part is not permissible in law. Accordingly, the impugned order whereby the plaint is partly rejected is set aside. The trial Court shall proceed in the suit in accordance

with law. All other contentions of both the parties are kept open.

8. In the light of *Sejal Glass Ltd.*, the law laid down by this Court in *Smt. Lakshmi and Others vs. Smt. Neelamma and Others* [ILR 2015 KAR 5725] to the extent it is contrary to *Sejal Glass Ltd.* stands impliedly overruled.

9. Learned counsel appearing for the respondents submits that the appellants-plaintiffs are dragging on the matter under one pretext or the other and hence, the trial Court may be directed to dispose of the suit expeditiously. As the suit is of the year 2011, the trial Court is directed to dispose of the suit expeditiously preferably by taking up the case on a day-to-day basis, and in any event, within six months from the date of receipt of a copy of this order. The appeal is disposed of in the above terms. In view of disposal of the appeal, IA No.1/2016 does not survive for consideration; it stands disposed of accordingly.

Appeal disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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