

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.381 OF 2015

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.24.11.2014 in IA.No.398 of 2014 in OS.No.273 of 2013 of the Principal Junior Civil Judge, Nizamabad.

2. The petitioners herein are defendants 1 and 2 in the said suit. The respondents 1 to 3, who are plaintiffs in the suit, sought a perpetual injunction restraining the petitioners and respondents 4 to 6/defendants 3 to 5 from interfering with their alleged peaceful possession and enjoyment of the suit schedule property. They also sought demarcation of the suit schedule property by mentioning the actual extents of suit schedule property after exclusion of the land belonging to respondents 4 to 6.

3. In the said suit, the petitioners filed IA.No.398 of 2014 under Order VII Rule 11(d) CPC to reject the plaint. They contended that the suit had been filed on the basis of an agreement of sale in respect of the suit schedule property for Rs.66,00,000/- executed by the petitioners in respect of which part sale consideration had been paid; that the respondents 1 to 3/plaintiffs have an effective remedy of seeking specific performance of contract against the petitioners and

respondents 4 to 6; since they have sought a mere injunction and demarcation of the suit schedule property, this is contrary to the provisions of Specific Relief Act, 1963 and other laws in force; that the injunction cannot be granted when equally efficacious remedy of filing suit for specific performance of the contract is available; and since the respondents 1 to 3 have failed to seek relief of specific performance of contract, which is a more efficacious remedy, the plaint is liable to be rejected.

4. Counter affidavit was filed by the respondents 1 to 3 opposing the said application. They contended that the grounds raised by the petitioners for seeking rejection of the plaint do not fall within the clauses mentioned in Order VII Rule 11(d) CPC and therefore the application should be dismissed with costs. It is also alleged that it is not for the petitioners to dictate terms to respondents 1 to 3 and it is the choice of the respondents 1 to 3 to file a suit which is maintainable under law.

5. By order dt.24.11.2014, the Court below dismissed the said application.

6. It held that the plaint averments disclose that on 14.11.2013 the petitioners tried to alienate the suit schedule property by concealing the agreement of sale dt.31.01.2013 executed by them in favour of respondents 1 to 3; that they had invested Rs.36,00,000/- in the suit schedule property under the said agreement of sale; and if the petitioners

succeed in their illegal attempts, the respondents would be put to irreparable loss and hardship. It also observed that since the petitioners had not denied about the agreement of sale and receipt of part of sale consideration there under, it is open to the respondents 1 to 3 to pray to protect the suit schedule property agreed to be purchased by them from the petitioners from being alienated by the petitioners to third parties. It also observed that though the respondents 1 to 3 can file a suit for specific performance of contract, they are also at liberty to file a suit to protect their right over the suit schedule property by way of seeking injunction; and merely because the respondents 1 to 3 could also file a suit for specific performance of contract, their right to sue the petitioners for the relief of perpetual injunction restraining the petitioners and respondents 4 to 6 from alienating the suit schedule property to third parties, is not barred by any law. It therefore held that Order VII Rule 11(d) CPC does not bar the suit for perpetual injunction even though alternative remedy is available to file a suit for specific performance of contract and as such there are no bonafides in the petition.

7. Challenging the same this Revision is filed.

8. Counsel for the petitioners relied upon an unreported judgment of the Bombay High Court dt.17.02.2012 in ***Appeal from Order No.616 of 2010 in Notice of Motion No.Ex.2 of 2008 from B.C.C.C. Suit No.1602 of 2008 with Civil***

Application No193 of 2012, in support of his plea that relief of injunction cannot be granted if an efficacious relief of specific performance can also be sought. He reiterated the submissions in the affidavit filed by the petitioners in the Court below.

9. Order VII Rule 11(d) CPC indicates the circumstances in which the plaint can be rejected. The plea of the petitioners that plaint should be rejected on the ground that the relief of perpetual injunction cannot be granted if equally efficacious remedy is available, is not a ground mentioned in Order VII Rule 11(d) CPC, which provides that plaint can be rejected if the suit appears from the statement in the plaint to be barred by any law.

10. In my considered opinion the provision under Order VII Rule 11(d) CPC would apply if there is only a specific bar to the filing of the suit and not to a situation like in the present one where a Court may decline to exercise its equitable jurisdiction to grant relief of injunction on the ground that some other efficacious relief is available and that would be a situation which would arise at the time of hearing of the suit.

11. Since the cause of action to maintain the suit against the petitioners has been made out in the plaint and the anxiety of the respondents 1 to 3 appears to be to protect the suit schedule property from being alienated, sold or mortgaged to third parties by the petitioners, who had admittedly agreed to

sell the suit property to them, *prima facie*, the suit cannot be said to be barred, as rightly observed by the Court below.

12. Further as the respondents 1 to 3 had invested a sum of Rs.36,00,000/- and had agreed to purchase the suit schedule property from the petitioners under an agreement of sale dt.31.01.2013, and since it is their apprehension that the petitioners were trying to sell the suit schedule property by concealing the said agreement of sale, merely because they can also file a suit for specific performance of contract, the suit for perpetual injunction filed by them, cannot be dismissed.

13. Therefore, I do not find any merits in this Civil Revision Petition. It is accordingly dismissed with costs of Rs.1,000/- (Rupees One thousand) to be paid by the petitioners to respondents 1 to 3 within four (04) weeks from the date of receipt of a copy of this order.

14. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

20th August, 2015.
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