

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.6170 of 2010

ORDER :

This Revision is filed challenging the order dt.27.09.2010 in I.A.No.680 of 2010 in O.S.No.2285 of 2009 on the file of III Additional Junior Civil Judge, Ranga Reddy District, at L.B. Nagar, Hyderabad.

2. The petitioner herein is the 3rd defendant in the above suit.

3. The 1st respondent/plaintiff filed the suit against respondent nos.2 and 3 and petitioner to direct petitioner to handover the alleged encroached land of extent 10 Sq.yds. and for other reliefs.

4. In the plaint, the 1st respondent contended that her sons are the owners of the plaint schedule property and she acted as a general Power of Attorney holder on their behalf. But the sons of 1st respondent have not been arrayed as plaintiffs in the suit.

5. The petitioner herein filed I.A.No.680 of 2010 under Order 7 Rule 11 C.P.C. contending that if 1st respondent is not the owner of the plaint schedule property and her sons are the owners of the plaint schedule property, she does not have any cause of action

for filing the suit against petitioner, and therefore, the plaint be rejected.

6. Counter-affidavit was filed by 1st respondent opposing this application, and contended that the application is vexatious.

7. By order dt.27.09.2010, the Court below dismissed I.A.No.680 of 2010. It observed that Order 7 Rule 11 C.P.C. is not attracted.

8. Challenging the same, this Revision is filed.

9. Heard Sri Ch. B.R.P. Sekhar, counsel for petitioner; and Sri N. Chandra Sekhar Reddy, counsel for respondents.

10. The counsel for petitioner contended that under Order 7 Rule 11 (a) C.P.C. if the plaint did not disclose a cause of action, the plaint is liable to be rejected; that since admittedly, the 1st respondent is not the owner of property and is only acting as an agent of her sons, she personally has no cause of action against petitioner; and therefore, she cannot file the suit against petitioner.

11. On the other hand, the counsel for respondent supported the order passed by the Court below.

12. I have noted the submissions of both sides.

13. There is no dispute that in the plaint filed by 1st respondent she pleaded that her sons are the owners of plaint schedule property and she is acting as their agent under a general Power of Attorney executed by them in her favour. So personally, the 1st respondent has no cause of action against petitioner and only her sons have a cause of action against petitioner, if at all. Since the sons have not been made parties to the suit, it has to be held that the plaint filed by 1st respondent does not disclose the cause of action against petitioner. The Court below is not correct in holding that the plaint cannot be rejected and that the relief sought by petitioner does not fall within Order 7 Rule 11 C.P.C.

14. Therefore the order dt.27.09.2010 in I.A.No.680 of 2010 in O.S.No.2285 of 2009 on the file of III Additional Junior Civil Judge, Ranga Reddy District, at L.B. Nagar, Hyderabad is set aside. The Civil Revision Petition is allowed. No order as to costs.

15. It is declared that the plaint filed by 1st respondent in the suit is liable for rejection as it does not disclose a cause of action against petitioner/3rd defendant.

16. Miscellaneous applications, pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 29-06-2015

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