

THE HON'BLE SRI JUSTICE K.C. BHANU

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CIVIL REVISION PETITION No.3081 OF 2014

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is directed against the Order, dated 25.08.2014, in Interlocutory Application No.94 of 2014 in Original Suit No.341 of 2013 passed by the Rent Controller-cum-Principal Junior Civil Judge, Tenali.

2. The aforesaid Interlocutory Application filed under Order VII Rule 11 (a) and (d) read with Section 151 of the Code of Civil Procedure, 1908 (for short, 'CPC') to reject the plaint, was dismissed.

3. Brief facts that are necessary for disposal of the present Civil Revision Petition may be stated as follows:

Revision Petitioners herein are defendant Nos.1 to 3, respondent No.1 herein is plaintiff, and respondent Nos.2 to 9 herein are defendant Nos.4 to 11 in the Original Suit. For better appreciation of facts, parties hereinafter are referred to, as they are arrayed in the Original Suit.

Late Venkata Chalapathi Rao is the absolute owner of the plaint schedule property having purchased the same under the registered sale deeds bearing Nos.1983 of 1976, 358 of 1978 and 368 of 1979 of Sub-Registrar's Office, Duggirala Mandal. He died intestate on 27.12.1986 and after his death, it constitutes a joint family property. Plaintiff and defendants are the co-owners, co-sharers and legal heirs of the deceased Venkata Chalapathi Rao. Therefore, they are entitled for their respective shares. It is further stated that the father of the plaintiff and defendant Nos.9 to 11, and defendant Nos.4 to 8 said to have sold the property to defendant Nos.1 to 3 under a registered sale deed bearing document No.461 of 2006, dated 16.03.2006 ignoring the rights of the plaintiff and defendant Nos.9 to 11. Therefore, the said sale transaction is not binding on the plaintiff as it has no validity in the eye of law and it is invalid.

4. Learned counsel for the revision petitioners contended that in view of Section 8 of the Hindu Succession Act, 1956, when a male person died intestate, property devolves upon Class-I heir; that the plaintiff, who is the son of one Ramakrishna, is not the Class-I heir; that the plaint does not disclose the cause of action and hence, he prays to allow the Civil Revision Petition.

5. On the other hand, learned counsel for the respondents contended that after the death of Venkata Chalapathi Rao, the property became joint family property of the plaintiff and the defendants; that the sale deed said to have been executed by the father of the plaintiff and defendant Nos.9 to 11 is invalid as it is not supported by consideration and those are disputed questions of fact, which cannot be decided at the threshold; that after considering the material on record, the trial Court rightly dismissed the same and that order needs no interference by this Court.

6. There cannot be any dispute that under Order VII Rule 11(a) CPC, the plaint has to be rejected when it does not disclose the cause of action. For that purpose, the averments in the plaint have to be looked into for the purpose of ascertaining whether it discloses the cause of action or not.

7. The contention of the learned counsel for the petitioners herein is that since the father of the plaintiff already sold the property to the siblings under a registered document, the plaintiff has no right to seek partition; that the document said to have been executed by the father of the plaintiff vide document No.461 of 2006, dated 16.03.2006 before the Sub-Registrar's Office, Duggirala, in favour of defendant Nos.1 to 3 is valid sale transaction as plaintiffs have no right to seek for partition in the plaint schedule property. The learned counsel for the respondent contended that the sale deed, dated 16.03.2006, is not supported by consideration and it is a sham and nominal document; that plaint schedule property is a joint family property and hence he prays to dismiss the revision petition.

8. Whether the document, dated 16.03.2006, said to have been executed by the father of the plaintiff is true, valid and binding on the plaintiff or not; whether the property is a joint family property or not; whether the original owner Venkata Chalapathi Rao on 27.12.1986, who admittedly died intestate, has right to sell the property or not; are questions of fact, which cannot be resolved at the threshold. In order to reject the plaint, unless the plaint averments do not make out a cause of action, the question of rejecting the plaint does not arise. Since the averments in the plaint made out a cause of action with regard to claim of plaintiffs in the plaint schedule property, it cannot be rejected. The trial Court rightly decided the issue. None of the findings is shown to be incorrect or perverse. In the absence of any illegality in the Order impugned, it needs no interference by this Court. The Civil Revision Petition is devoid of merit and the same is liable to be dismissed.

9. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous Petitions, if any, pending shall stand closed.

JUSTICE K.C. BHANU

Date:02.04.2015

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