

THE HON'BLE SRI JUSTICE A.V. SESA SAI

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CIVIL REVISION PETITION No.4350 OF 2015

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ORDER:

This revision petition filed under Article 227 of the Constitution of India, by the plaintiffs in O.S.No.184 of 2012 on the file of the Court of Senior Civil Judge, Markapur, assails the order dated 21.09.2015 passed by the said court in I.A.No.327 of 2015.

2. Heard Sri Nimmagadda Satyanarayana, learned counsel, appearing for the petitioners. Despite service of notice, none appears on behalf of the respondent/defendant.

3. The petitioners herein instituted O.S.No.184 of 2012 for declaration of the registered sale deed dated 13.08.2012 executed in favour of the defendant by the process of the court as null and void and not binding on the plaintiffs and for cancellation of the said sale deed and for permanent injunction. The defendant/respondent herein filed a written statement on 19.11.2012, resisting the plaint averments. The learned Senior Civil Judge framed the issues and the suit is coming up for trial.

4. The plaintiffs/petitioners herein filed the present I.A.No.327 of 2015 under the provisions of Order 6 Rule 17 of Code of Civil Procedure (herein after, 'CPC'), seeking amendment of the plaint by addition of the prayer for declaration that the decree and judgment dated 22.07.2011 passed in O.S.No.74 of 2010 is null and void and does not bind the plaintiffs. The defendant/respondent herein filed the counter, opposing the said application. The learned Senior Civil Judge, by virtue of an order dated 21.09.2015, dismissed I.A.No.327 of 2015. Calling in question the validity and legal sustainability of the said order passed by the learned Senior Civil Judge, the present Revision Petition has been filed.

5. It is contended by the learned counsel for the petitioners that the order under revision passed by the learned Senior Civil Judge is erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Order 6 Rule 17 of CPC.

It is also the submission of the learned counsel that the learned Senior Civil Judge did not take into consideration the averments in the plaint and the affidavit filed in support of the present application and had the same been taken into consideration the order impugned would not have emanated. It is also contended by the learned counsel that the observations made by the learned Senior Civil Judge are contrary to the material available on record.

6. In the above backdrop, now the issue that emerges for consideration of this court is:

“Whether the order passed by the learned Senior Civil Judge, which is under challenge in the present revision is sustainable and tenable?”

7. In the affidavit filed in support of the I.A.No.327 of 2015, the plaintiffs/petitioners herein stated that by way of advertence and overlook they did not take the plea that the decree and judgment in O.S.No.74 of 2010 passed by the learned Senior Civil Judge, Markapur is irregular, illegal, irrational, null and void and does not bind and is vitiated by fraud by the defendant.

8. A perusal of the order under challenge shows that the learned Senior Civil Judge dismissed the application mainly on the ground that the petitioners herein did not take the plea of fraud in their plaint. The learned Senior Civil Judge also observed that since plaintiffs did not plead the element of fraud in the plaint, they are not entitled to seek the relief of amendment as prayed for. A copy of the plaint in O.S.No.184 of 2012 is placed on record along with the present revision petition.

9. Learned counsel appearing for the petitioner has pointed out Paragraph Nos.6 and 8 of the plaint, which read as under:

“6. It is submitted that while so, the defendant who is bent upon to grab the suit schedule property by back door methods had filed a suit in O.S.No.74 of 2010 on the file of Senior Civil Judge Court, Markapur, against the 1st plaintiff for specific performance of contract on the foot of the forged and fabricated document dated 03.07.2007 as if the 1st plaintiff had executed agreement for sale on 03.07.2007 by fabricating anti-dated agreement. The 1st plaintiff was served summons on 25.06.2010 which was also stage managed. The alleged sale agreement dated 03.07.2007 is forged one. Even till today the plaintiffs are in possession of the schedule property.

8. It is submitted that the 2nd plaintiff after purchase from the 1st plaintiff put a fencing around land of Ac.8.59 Cents. But there is no fencing to the land measuring Ac.1-00 in S.No.206/1 which was purchased from 1st plaintiff since no plots are there and red gram crop is raised by the 2nd plaintiff as shown in the plaint plan. The 2nd plaintiff had spent huge amount of Rs.25,00,000/- (Twenty Five Lakhs Only) for clearing wild bushes with the help of proclainers and made into plots which is useful for the house sites. He had also prepared a layout to get the approval from the panchayath as stated supra. At this point of time the defendant started proclaiming in the village since one week that he has obtained sale deed through the process of the court and he is seeking help of surveyor and Tahasildar to occupy the suit schedule land. Then the plaintiffs came to Markapur 2 days back and they came to know that the defendant had obtained registered sale deed in respect of suit schedule land behind their back inspite of knowing the sale by 1st plaintiff in favour of 2nd plaintiff by playing fraud and misleading the Honourable Court. Hence the suit for declaration to declare the registered sale deed dated 13.08.2012 as null and void and it is not binding on the plaintiffs and for cancellation of registered sale deed. The 1st plaintiff is not seeking any relief from the defendant.”

10. A reading of the above paragraphs manifestly and candidly discloses that the petitioners herein have taken the plea of fraud in clear terms. Therefore, the findings of the learned Senior Civil Judge recorded contra are unsustainable. It is a settled and established proposition of the laws that all the amendments, subject to the limitations as stipulated under Order 6 Rule 17, are required to be allowed for the purpose of determining the real question in controversy between the parties. In the instant case since the petitioners herein have taken the plea of fraud in specific terms in the plaint, the order impugned in the revision cannot stand for judicial scrutiny.

11. For the aforesaid reasons, the revision petition is allowed, setting aside the order dated 21.09.2015 passed by the learned Senior Civil Judge, Markapur, in I.A.No.327 of 2015 in O.S.No.184 of 2012 and consequently, the said I.A.No.327 of 2015 is allowed. Miscellaneous petitions pending consideration, if any, in the Revision Petition shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

17th November, 2015

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