

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No.2204 of 2015

ORDER:

The petitioner herein is the defendant in O.S. No.56/2013 on the file of the Court of the learned X Additional District Judge, Krishna at Machilipatnam. The respondent herein filed the said suit for specific performance of agreement of sale dated 12.06.2009. The said suit was filed on 13.11.2013 and the petitioner herein filed written statement on 31.01.2014. At the time of cross-examination of PW1, the petitioner herein filed I.A. No.518/2014 seeking amendment of the written statement by adding paragraph No.7(a) after paragraph No.7.

The proposed amendment reads as follows:

“7(a). The defendant submits that after filing the suit by the plaintiff, he came to know made some transactions without intimation of the defendant. The plaintiff is having an evil intention to grab the plaint schedule property from the defendant. Recently I came to know that the plaintiff obtained a registered mortgage transfer deed from the original mortgagor of the defendant by name Nukala Ram Kumar, son of Venkateswara Rao on 16-03-2013 (Sixteenth day of March, Two thousand thirteen) under Document No.1777/2013 on the name his daughter-in-law by name Karnatapu Yasoda, wife of Jagannadh of Machilipatnam.

Neither Nukala Ram Kumar, the original mortgagor nor Karnatapu Yasoda gave notice to the defendant before or after the above said transaction. The defendant submits that the value of the plaint schedule property is increasing from day to day. The defendant submits that the alleged mortgage transfer deed is creating and fabricated without consideration. The plaintiff, his daughter-in-law and the said Nukala Ram Kumar are having an evil intention to grab the plaint schedule property from the defendant, they created the above alleged mortgage transfer deed dated 16-03-2013. The defendant submits that some attestors are one and same in agreement of sale and alleged mortgage. The defendant submits that the alleged mortgage transfer deed, which was executed by Nukala Ram Kumar in favour of the daughter-in-law by name Karnatapu Yasoda dated 16-03-2013 is not binding upon the defendant. The above said material facts intentionally suppressed by the plaintiff in the suit and he approached the Honourable Court with

unclean hands.”

The plaintiff filed a counter stating that he is aged about 76 years and having three sons and daughters. He gifted some properties in their favour and all the sons of the respondent are living separately. The respondent and wife are residing alone. In fact, one of the sons of the respondent filed a suit, against the respondent, which is pending before the Court of the learned VI Additional District Judge, Machilipatnam. He might have colluded with one Nukala Ram Kumar and made false transfer to the wife of one of the sons of the respondent, but the respondent is no way concerned with the same. He also denied the knowledge of the said transaction.

The application filed by the petitioner herein was dismissed, by order dated 28.04.2015, holding as follows:

“The petitioner herein is the defendant filed a detailed written statement denied the suit claim and the court has framed issues and the respondent filed his chief affidavit on 05.09.2014 and certain documents marked coming for cross examination at this stage, the present application is filed by the petitioner/defendant by enclosing copy of mortgage deed disclosed that one Ram Kumar said to have been executed registered mortgage deed in favour of one Yesoda w/o Jagannadham in respect of the schedule property. Though the property covered in the mortgage deed dt.16.03.2013 is the subject matter of the present suit which filed for specific performance of contract but the parties covered in the mortgage deed dt.16.03.2013 are not parties to the present proceedings and the real controversy in between the same parties does not arise in the present suit. Therefore the petitioner/defendant has only remedy by filing separate suit to question mortgage deed dt.16.03.2013 said to have been executed by one Ram Kumar in favour of Yesoda w/o Jagannadham therefore the grounds agitated by the petitioner for amendment of the pleadings is unsustainable.”

Accordingly I answered the point against the petitioner.”

I have carefully gone through the proposed amendment along with the affidavit filed in support of the application, and after hearing the learned counsel for petitioner I do not see any ground to interfere

with the order passed by the trial Court.

Accordingly, this Civil Revision Petition is dismissed. No order as to costs.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.RAMALINGESWARA RAO, J

17.12.2015
MVA