

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

Civil Revision Petition No.813 OF 2015

ORDER :

This Civil Revision Petition is filed against order dated 10.12.2014 in C.F.No.394 of 2014, wherein the Court below has rejected the petition, which was filed seeking permission to sell the B-schedule properties to third parties in order to raise funds for the purpose of constructing compound wall in the remaining portion in an extent mentioned in A schedule property.

It is the case of the petitioner that one Sri Lakshman Yogi is the absolute owner of the entire land and building measuring in an extent of Ac.9.20 cents by obtaining registered Gift Deed document No.2009/1958 at Sub-Registrar's Office, Nellore from one Sri Dayakar Reddy. It is stated that Sri Lakshman Yogi has been in possession and enjoyment of only Ac.7.41 cents situated at Chillakur, near Gudur, SPSR Nellore District Andhra Pradesh and that the present petitioner is the General Power of Attorney holder for the schedule mentioned land and he filed the present petition to sell the B schedule property for the purpose of construction of compound wall. It is stated that the Court below has rejected the petition on the ground that there is a clause in the Gift Deed prohibiting the alienation of the schedule property and also on the ground that there is no cause of action to file the present petition.

Sri K.Chidambaram, learned counsel for the petitioner submits that whether the relief sought for by the petitioner can be granted in the proceedings or not is only after consideration of the matter on merits, but the same cannot be thrown out at the threshold unless the conditions mentioned under Order VII Rule 11 of CPC are satisfied.

In the instant case on hand, admittedly, paragraph 12 of the plaint discloses the cause of action and without considering that aspect, the trial Court erroneously rejected the application of the petitioner. For better appreciation, paragraph 12 of the petition is extracted hereunder:

“12.The cause of action for the petition arose at Chillakur, where encroachment of 1.23 cents of vacant land was made by poor people and an estimate

of construction of compound wall was given by a licenced surveyor for 5.41 cents in order to prevent further encroachment in A Schedule property and hence this petition is filed seeking permission to sell B schedule mentioned property to meet the expenses of construction of a compound wall in A schedule mentioned property. The petitioner further states that the property was gifted to him in the individual capacity and there is no creation of public or private trust in the above mentioned property and therefore Section 92 and order 49 CPC is not applicable and only under Section 151 CPC and Transfer of Property Act, this petition is maintainable.”

The above paragraph discloses about the cause of action. Since the allegation of the petitioner that the petition schedule property is gifted to Sri Lakshman Yogi, whether those allegations are true or not depends on the evidence lead in by the petitioner. When certain cause of action is alleged, it is for the Court below to decide the same after numbering the petition, basing on pleadings and evidence, to grant relief or not basing on the merits and it cannot be thrown out at the threshold.

In view of paragraph 12 of the petition, which discloses cause of action, the order under revision is set aside and the Court below is directed to decide the issue on merits, if it is otherwise in order, by numbering the petition.

Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

A.RAJASHEKER REDDY, J

10.04.2015

Note: issue CC in two days.

B/o.kvs

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