

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

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C.R.P.No.4340 of 2014
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ORDER:

This Revision Petition is filed under Article 227 of the Constitution of India challenging the Order dt.13-08-2014 in I.A.No.689 of 2013 in O.S.No.155 of 2012 of the Judge, Family Court, Kadapa.

2. The petitioner herein is the 1st defendant in the said suit. The respondent Nos.1 and 2 filed the said suit for specific performance of an agreement of sale dt.15-02-2012 after getting the plaint schedule property surveyed and for perpetual injunction restraining the petitioner/1st defendant from alienating the plaint schedule property.

3. The petitioner/1st defendant filed a written statement admitting the execution of said agreement of sale and stating that he complied with his obligations thereunder but the plaintiff did not pay the balance sale consideration. He denied the allegation that he did not come forward to measure the land or to execute the registered sale deed. He prayed that the Court below to direct the respondent Nos.1 and 2/plaintiffs to deposit the balance sale consideration with interest at 12% per annum from 15-02-2012 into Court to prove their readiness and willingness.

4. The Court below directed the respondent Nos.1 and 2 to deposit the remaining balance sale consideration on or before 19-06-2013 by Order dt.17-06-2013. This Order was not complied with by the respondent Nos.1 and 2. They filed an application I.A.No.536 of 2013 under Section 148 CPC for extension of time to deposit the balance sale consideration by 20 days. The said

application was allowed and the time was granted up to 24-06-2013 for compliance with the direction of the Court by the respondent Nos.1 and 2 for depositing the balance sale consideration. In the extended period also, the respondent Nos.1 and 2 did not comply with the Court order.

5. Thereafter, D-1 filed application under Order 14 Rule 2 CPC to dismiss the suit. He contended that the respondent Nos.1 and 2 are not ready and willing to perform their part of agreement in spite of orders of the Court to deposit the amount and that the pendency of the suit would cause great hardship and irreparable damage to him.

6. This application was opposed by the respondent Nos.1 and 2. They contended that no plea was raised by 1st defendant that the suit is not maintainable and that unless issues are framed after filing pleadings, question of entertaining application under Order 14 Rule 2 CPC does not arise. They further contended that they came to know that the Government would acquire said property for road widening and by suppressing this fact, 1st defendant entered into an agreement of sale with the respondents. They contended that there are no *bona fides* on the part of the petitioner to file the application to deposit the remaining amount and the non-deposit by them is not negligence on their part for the aforesaid reason.

7. By Order dt.13-08-2014, the Court below dismissed the said application.

8. Challenging the same, this Revision Petition is filed.

9. The learned counsel for the petitioner contended that the Court below ought not to have rejected I.A.No.689 of 2013 filed by

the petitioner and that since the respondent Nos.1 and 2 did not deposit the balance sale consideration in spite of direction from the Court, Court below should have dismissed the suit.

10. The learned counsel for the respondent Nos.1 and 2 on the other hand contended that there is no decree passed by the Court on the basis of the written statement filed by the 1st defendant; there is specific clause in the agreement of sale that the property would be got measured and after ascertaining the actual extent of the land, balance sale consideration should be paid. He contended that no material is placed with regard to the measurements of the property and that the property is also proposed to be acquired by State and in these circumstances, the Court below rightly dismissed the said I.A. He further contended that application under Order 14 Rule 2 CPC is not maintainable since in the present case, issues themselves have not been framed.

11. I have noted the submissions of both sides.

12. Order XIV Rule 2 CPC states:

“Order XIV Rule 2 - Court to pronounce judgment on all issues”

(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to--

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been

determined, and may deal with the suit in accordance with the decision on that issue.]”

There is no dispute that no issues have been framed in the present suit. Therefore Order 14 Rule 2 CPC is not attracted to the facts of the case.

13. It may be that the petitioner/1st defendant had admitted that he executed the suit agreement of sale and sought a direction to the respondent Nos.1 and 2 to deposit the balance sale consideration. But the fact remains that no decree on that basis has been passed by the Court below. Since there is a dispute as to whether the land has been got measured or not and since it is also contention of the respondent Nos.1 and 2 that some portion of the land is sought to be acquired by the Government, unless issues are framed and trial is conducted, it is not possible to find out whether the plaintiffs or the 1st defendant is at fault. On the ground that the respondent Nos.1 and 2 have failed to deposit the balance sale consideration as directed by the Court, the petitioner is not entitled to have the suit dismissed. There is no decree in the suit on the basis of the stand taken in the written statement by 1st defendant so as to invoke Section 28 of the Specific Relief Act. So I am of the opinion that the Court below has rightly dismissed the said I.A. as not maintainable. Since I do not find any jurisdictional error in the order passed by the Court below, the Revision Petition is liable to be dismissed and is accordingly dismissed. No costs.

14. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date : 02-02-2015

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