

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2531 of 2016

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is filed challenging the Order Dt. 25.04.2016 in I.A.No.83 of 2016 in O.S.No.1708 of 2007 on the file of XVIII Additional Senior Civil Judge, City Civil Court, Hyderabad, dismissing the petition filed under Order VII Rule-11 of Code of Civil Procedure (hereinafter will be referred to as ' CPC') for rejection of the plaint on the ground that the plaint does not disclose the cause of action and it is barred by Section 53-A of Transfer of Property Act, (For short ' the T.P.Act).

2. It is the case of the Revision Petitioner that he purchased the property under Agreement of Sale dt. 2.04.1996 from respondents/plaintiffs and later he filed a suit in O.S.No.1392 of 1999 on the file of VIII Additional Senior Civil Judge, City Civil Court, Hyderabad, for specific performance, which was decreed on 08.02.2005, but in the appeal in A.S.No.440 of 2005 on the file of III Additional Chief Judge, City Civil Court, Hyderabad, the decree and judgment passed by the trial Court dt.8.02.2005 are reversed while allowing the appeal by its Decree and Judgment dt. 21.02.2007. Thereafter, the Revision Petitioner filed Second Appeal No.797 of 2007 and the same is pending before this Court.

3. It is further contended that the respondents/plaintiffs have received Rs.1,10,000/- as advance out of sale consideration of Rs.1,80,000/- and later they refused to execute Sale Deed and demanded more money and as such, the revision petitioner was constrained to file the suit in O.S.No.1392 of 1999 for specific

performance.

4. It is the specific case of the revision petitioner that the suit is barred by Section 53-A of T.P.Act and that there is no cause of action for filing the suit and prayed to reject the plaint on these two grounds by allowing I.A.No.83 of 2016.

5. The respondents/plaintiffs filed Counter denying the material allegations, *inter alia* contending that the Petition filed by the revision petitioner is not maintainable and that he forcibly took possession of the schedule property and harassed the respondents taking advantage that they are helpless persons. Though the suit for specific performance filed by the revision petitioner was dismissed, no interim orders were passed by this Court in the second appeal and the question of maintainability of the suit based on the facts and law and as such, the petitioner cannot ask for rejection of the plaint at this stage and the revision petitioner is not entitled to hold possession of the schedule property and prayed for dismissal of the petition.

6 . The trial Court after hearing both for revision petitioner/defendant and the respondents/plaintiffs, recorded different reasons and passed the impugned Order dt.25.04.2016 dismissing the petition by imposing costs of Rs.2000/-.

6. Aggrieved by the Order and Decretal Order passed by the trial Court, the present Revision is filed raising several contentions and mainly contended that adverse findings recorded in para No.7 of the Order directly amounts to denial of the defence set up by the revision petitioner to invoke benefit under Section 53-A of T.P.Act and it will affect the defence of the petitioner in the main suit. It is further contended that when the suit is hit by Section 53-A of T.P.Act, the plaint is liable to be rejected and that apart, the

cause of action mentioned in the plaint is not true and prayed to set aside the Order passed by the trial Court.

8. Per contra, the counsel for respondents/plaintiffs argued that findings in para No.7 of the impugned order will not have any bearing on disposal of the main suit and the findings of the trial Court cannot be modified while exercising power under Article 227 of the Constitution of India and supported the Order of the trial Court in all respect and prayed for dismissal of the Revision Petition.

9. Considering rival contentions and perusing the material available on record, the point that arise for consideration is:

Whether the plaint shall be rejected on the ground that the suit is hit by Section 53-A of Transfer of Property Act and that there is no cause of action in the plaint ?

10. **In RE POINT:-**

Order 7 Rule 11 of CPC deals with the following cases:

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails comply with the provision of Rule 9.

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.

11. The revision petitioner mainly contending that the suit is not in compliance of Section 11 (a) and (D) of CPC i.e., plaint does not disclose no cause of action and that the suit is barred by any law. As seen from the plaint allegations, it is clear that the plaintiff filed the suit for specific performance, which ended in dismissal in the first appeal, but the second appeal is pending as on today and no interim order was obtained by the Revision Petitioner before this Court in the second appeal. However, in the absence of any interim injunction in the second appeal, which gives rise to a cause of action for recovery of possession by the respondents herein and the same is mentioned specifically in cause of action paras in the plaint. Therefore, on the ground that the plaint does not disclose any cause of action for the suit, the plaint cannot be rejected by exercising power under Order 7 Rule 11 CPC.

12. The second contention of the revision petitioner is that the suit is hit by Section 53-A of T.P.Act. Section 53-A of T.P. Act deals with part performance and even to claim benefit under Section 53-A of T.P.Act, the revision petitioner has to establish that there is a contract in writing for sale of the property and that he was inducted into possession or continuing in possession and has done some act in furtherance of the contract of sale and that he is ready and willing to perform his part of obligation. All these requirements have to be established by adducing evidence to the satisfaction of the Court. If the revision petitioner fails to establish any of the requirements stated supra, he is disentitled to claim protection under Section 53-A of T.P.Act. However, it is the contention of the respondents that this Petition was filed only after examining the plaintiff and another person as PWs. 1 and 2 and elicited some material in the evidence, in the cross examination of those two witnesses. But, it is for the defendant, who wanted to

avail the benefit under Section 53-A of T.P.Act to establish four requirements stated above by adducing cogent and satisfactory evidence. Moreover, such plea of part performance in a suit filed for recovery of possession is available to the petitioner since that can be used as a shield from dispossessing the respondents. Therefore, in the circumstances, at this stage, the Court cannot reject the plaint on the ground that the plaint does not disclose the cause of action or on the ground that the suit is hit by Section 53-A of T.P. Act to attract the provisions of Order 7 Rule 11 (a) and (d) of CPC.

13. Bar of suit by any law is not general and even otherwise, Section 53-A of T.P.Act is not a bar for filing a suit for recovery of possession, but it is available as a defence in a suit filed for recovery of possession only to protect his possession. Therefore, on this ground, the Order passed by the trial Court cannot be set aside since the order of the trial Court does not suffer from any illegality or infirmity warranting interference of this Court while exercising power under Article 227 of the Constitution of India. However, the observations made in para No.7 of the Order will have no bearing in deciding the main suit and the trial Court is directed to decide the main suit uninfluenced by the observations or findings, if any recorded in the order of the trial Court or by this Court.

14. With the above observation, this Civil Revision Petition is dismissed, but without costs in the circumstances of the case.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 10-08-2016.

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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C.R.P. No.2531 of 2016

Dt. 10-08-2016

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