

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2810 OF 2016

ORDER:

This revision petition, under Section 115 of the Code of Civil Procedure, 1908 (for short, 'CPC'), is filed challenging the Order dated 15.02.2016, in I.A. No.3490 of 2012 in A.S. (SR) No.16724 of 2012, passed by the Chief Judge, City Civil Court, Hyderabad, whereby granted leave to petitioners to prefer an appeal against the Decree and Judgment in O.S. No.3631 of 2009.

02. The respondents 1 and 2 herein filed an application before the appellate court under Rule 8-A of Order I read with Section 151 of the Code of Civil Procedure, 1908 (for short, 'CPC') before the Chief Judge, City Civil Court, Hyderabad, seeking leave of the Court to file an appeal against the Decree and Judgment dated 23.04.2012 in O.S. No.3631 of 2009 on the ground that they entered into development agreement-cum-General Power of Attorney dated 29.07.2010 with the third respondent, wherein the third respondent and his other co-owners have transferred all their rights, title and interest over their share in the property to the first respondent, accordingly they are entitled to file an appeal and that the third respondent did not evince any interest in filing the appeal and prosecuting the proceedings before the competent court, and therefore, sought leave to prefer an appeal.

04. The revision petitioner filed counter in the said interlocutory application denying the allegations made in the

affidavit, while contending that respondents 1 and 2 are fighting proxy war on behalf of the third respondent herein and the suit schedule property does not form part and parcel of the property claimed by the third respondent herein. It is further contended that respondents 1 and 2 are aware of the pendency of the suit and they did not impelad themselves as a party to the suit and no explanation was offered for their failure to implead themselves to the pending suit by then and therefore taking advantage of the alleged development agreement-cum-general power of attorney to file present appeal against the Decree and Judgment dated 23.04.2012, in O.S. No.3631 of 2009, passed by the VII Junior Civil Judge, City Civil Court, Hyderabad,

05. The third respondent filed a separate counter in the said interlocutory application contending that the petition is liable to be dismissed on the ground that a wrong provision of law is quoted and that the suit for injunction is restricted to the parties to the suit and third parties are not entitled to come on record to file an appeal and prayed for dismissal of the petition.

06. Based on the above pleadings, the appellate court framed a point for consideration.

07. During hearing, no document was marked and no witnesses were examined.

08. Upon hearing argument of both the counsel, the appellate court came to the conclusion that there is a prima facie case in favour of the respondents 1 and 2 herein, since they entered into development agreement-cum-general power of attorney dated 29.07.2010 with the third respondent herein and

wherein the third respondent herein and his other co-owners have transferred their rights and interest over their share in the schedule property to the first respondent.

09. The Order passed by the appellate court is challenged in this revision petition on various grounds and during hearing, Sri G. Arun, learned counsel for the revision petitioner, contended that in the absence of any development agreement-cum-general power of attorney, the finding recorded by the appellate court is erroneous and without any basis. On this ground alone, the order is liable to be set aside. Apart from that the person who allegedly entered into the agreement cannot file an appeal. Rule 8-A of Order I of CPC deals with a suit in representative capacity and unless a person prejudicially or adversely affected by Decree, they cannot file an appeal as a person aggrieved under Section 97 of CPC. On this ground also, the revision petition is liable to be dismissed.

10. Despite service of notice and Sri K.V.Siva Prasad, learned counsel appearing for the respondents 1 and 2, neither appeared nor get the matter represented through somebody in this revision petition.

11. Considering the contentions of the revision petitioner and Order, under challenge before this Court, passed by the Chief Judge, City Civil Court, Hyderabad, the point that arise for consideration is,

Whether respondents 1 and 2 are the persons aggrieved within the meaning of Section 97 of CPC. If so, are they entitled to file an appeal under Rule 1 of Order XLI read with 96 of CPC

without producing any evidence in support of their interest in the property, and the Judgment of the trial court is prejudicial to their interest? If not, the Order passed by the Chief Judge, City Civil Court, Hyderabad, be sustained?

POINT:

12. The first and foremost contention raised by the counsel for the revision petitioners is that in a petition filed under Rule 8-A of Order I of CPC, no leave can be granted. No doubt, Rule 8-A of Order I of CPC permits a person or body of persons to present opinion or to take part in the proceedings and according to Rule 8(1) (a) of Order I of CPC, one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested. Rule 8-A of Order I of CPC has no application to the present facts of the case to file an appeal being a person aggrieved by the Decree and Judgment passed by the trial court. Even Rule 8(1)(a) of Order I of CPC has no application to the present petition.

13. But, mere misquoting or wrong quoting provision of law is not a ground to dismiss the petition, if the petitioners are otherwise entitled to claim relief and therefore on the ground of misquoting or wrong quoting of provision of law, the petition filed before the appellate court cannot be dismissed.

14. The other contention of the counsel for the revision petitioners is that the respondents 1 and 2 are not persons aggrieved within meaning of Section 97 of CPC. Section 97 of CPC permits an aggrieved person to challenge the Decree, if

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their right or interest is prejudiced or affected by the Decree and Judgment. To claim that the respondents 1 and 2 are the persons aggrieved under Section 97 of CPC, they set up a development agreement-cum-general power of attorney, but such power of attorney was not brought on record before the appellate court, which is the basis for their claim. In the absence of such development agreement-cum-general power of attorney, they are no way concerned with the property in dispute and the question of prejudice to their rights and interest or effecting their rights over of the property does not arise.

15. In the absence of development agreement-cum-general power of attorney, based on the allegations made in the affidavit that they entered into development agreement-cum-general power of attorney which was denied by the revision petitioner, the court cannot pass the Order granting leave to the persons aggrieved, under Section 97 of CPC.

16. If really, the respondents 1 and 2 entered into development agreement-cum-general power of attorney, it may create an interest in the property, since the alleged agency with the second petitioner before the appellate court and the revision petitioner creates an agency coupled with interest within the meaning of Section 202 of the Indian Contract Act.

17. In such case, they can claim that they are the persons aggrieved by the Decree and Judgment of the trial court, but in the absence of such development agreement-cum-general power of attorney, the respondents 1 and 2 are not entitled to file an appeal aggrieved by the Decree and Judgment passed by

VII Additional Junior Civil Judge, City Civil Court, Hyderabad, in O.S.No.3631 of 2009 as the petitioners failed to show any prejudice to their rights, but the appellate court even without insisting production of such development agreement-cum-general power of attorney 29.07.2010, came to the conclusion that title, right etc., are transferred in favour of the respondents 1 and 2, thereby entitled to file an appeal being the persons aggrieved, as such, conclusions of the appellate court are without any material on record and therefore, the Order passed by the appellate court in I.A. No.3490 of 2012 in A.S. (SR) No.16724 of 2012 is illegal, as conclusion arrived at by the appellate court at paragraphs 17 and 18 of the Order are not based on any material and the judgment would prejudicially effect the rights or interest of the respondents 1 and 2. Hence, the order passed by the appellate court is liable to be set aside.

18. In the result, the revision petition is allowed setting aside the Order dated 15.02.2016 in I.A. No.3490 of 2012 in A.S. (SR) No.16724 of 2012 passed by the Chief Judge, City Civil Court, Hyderabad. No costs.

19. Miscellaneous petitions, if any, pending in this revision petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 07.09.2016
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