

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P.No.2626 OF 2015

ORDER :

The revision petitioner is the 1st defendant, the revision 1st respondent is the sole plaintiff and the revision 2nd respondent is the second defendant.

The suit O.S.No.48 of 2013 is filed and pending on the file of I Additional Chief Judge, City Civil Court, Secunderabad, for the relief of cancellation of the registered gift deed/settlement deed dated 28.05.2012 (document No.1229 of 2012), for consequential perpetual injunction and for other reliefs.

In the plaint, at para 11 - cause of action para, it is specifically mentioned as to how it gives cause of action to the plaintiff to sustain the suit *lis*. It is also mentioned in the plaint as the limitation para *that* the suit is within three years for seeking the relief of cancellation of the document.

Be that as it may, the 1st defendant filed written statement on 08.07.2014 opposing the suit claim on various grounds. On 26.03.2014 the 1st defendant filed I.A.No.870 of 2014 under Order 7 Rule 11 and Section 151 of the Code of Civil Procedure, to reject the plaint. One of the contentions in said petition supporting affidavit, particularly from para 7, is that, having admitted that he is the owner of the property, which he succeeded from his ancestral property in the partition and when once he is the absolute owner, he is

competent to execute the gift and to question the same, much less to seek for its cancellation, the plaintiff has no cause of action and the suit claim is with no right or entitlement, much less with locustandi. Covered by the impugned order dated 10.10.2014, learned I Additional Chief Judge, City Civil Court, Secunderabad dismissed the application with the observation that prima facie, from the plaint averments, to deprive the shelter of the plaintiff, the so called gift deed is executed as a sham one and thereby, she, being the wife of the 1st defendant got legitimate right to sustain the suit claim and there is, prima facie, cause of action to maintain. It is the said order, which is now impugned, in the revision.

It is the oral submission of learned counsel for the revision petitioner/defendant No.1 that the trial Court committed error in not considering the written statement defence and that the plaintiff has no locustandi to sustain the suit claim.

In fact, what the Court has to consider, as rightly pointed out, in response to it by the learned counsel for the revision 1st respondent/plaintiff is, that had the Court gone through the plaint averments, as if true, whether it discloses cause of action or not and not to consider the defence of the defendants which is the prerogative of the trial Court for formulating issues and to put the parties to trial, either to decide as a preliminary issue or as one of the several issues for effective adjudication.

Having regard to the above, as the law is very clear, for this Court while sitting in revision there is nothing to interfere.

Accordingly and in the result, the civil revision petition is dismissed. There shall be no order as to costs.

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

Dr.B.SIVA SANKARA RAO,J

07.09.2016
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