

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 5051 of 2016

ORDER:

The application filed, under Order VII Rule 11 CPC, seeking to reject plaint on the ground that no cause of action arises in the suit, was dismissed.

Sri P.Venugopal, learned Senior Counsel appearing for the petitioners – defendants, submits that suit was filed by the respondent – plaintiff firm alleging that General Power of Attorney (GPA) was executed in favour of the first petitioner – first defendant; the first defendant got a sale deed executed by APIIC Limited in the name of plaintiff; and, thereafter, the first petitioner – first defendant executed the same in favour of the second petitioner – second defendant. Learned Senior Counsel, while drawing specific attention to para 7 of the plaint, would submit that sale deed in favour of plaintiff was executed on 07.07.2010 by APIIC and, thereafter, by virtue of GPA in favour of first petitioner – first defendant, he executed sale deed on 27.08.2010 in favour of second petitioner and GPA came to be cancelled on 05.10.2010. Learned Senior Counsel submits that the facts themselves speak and, on the face of the sale deed dated 07.07.2010, executed in favour of plaintiff by APIIC, wherein the photograph of Smt P.Kalpana, the proprietrix of the plaintiff firm, was affixed, thus, the question of first petitioner – first defendant playing fraud does not arise since the factum of GPA being executed in favour of

first petitioner is not disputed and being valid till 05.10.2010. In those facts situation, the Court below ought to have allowed I.A. and rejected the plaint.

Learned counsel for the respondent - plaintiff submits that the suit in O.S.No.245 of 2010 was filed in the Court of VI Additional District Judge, Nellore and, subsequently, renumbered as O.S.No.171 of 2014 on the file of VII Additional District Judge, Gudur. Learned counsel would submit that written statement as well as additional written statement were filed and, at the stage of commencement of trial, the present application was filed. Learned counsel submits that the petitioners had played fraud and forged signatures and thumb impressions of the proprietor of the plaintiff firm in the sale deeds and further had not informed about execution of sale deed in favour of first petitioner and, subsequently, execution of sale in favour of second petitioner. He would also submit that no consideration, whatsoever, was received by the respondent – plaintiff. He also submits that, the petition filed is belated and therebeing no merit in the same, the Court below was justified in dismissing the application.

I have considered the respective submissions. The suit came to be filed with specific allegations of fraud, forgery and impersonation by first petitioner – first defendant. The sum and substance of the allegations, as pleaded in the plaint, is that GPA was misused by first petitioner – first defendant to

deprive valuable property and fraudulently got the sale deed executed in favour of the second petitioner – second defendant, who is none other than the wife of the first petitioner – first defendant, being the GPA holder of the respondent – plaintiff. The aspects of forgery, impersonation and non-receipt of consideration by respondent – plaintiff are all matters which can be decided after full-fledged trial. In the case on hand, the allegation against both the petitioners – defendants (husband and wife) is that they played fraud and obtained sale deed in favour of respondent – plaintiff without her knowledge and immediately within one month transferred the subject property in favour of the second petitioner by utilizing the GPA.

On a query by this Court whether any consideration has been paid by the petitioners in favour of the respondent – plaintiff, there is, however, no positive answer from them. Truth or otherwise of the allegations can only be decided after full-fledged trial. The relief claimed in the suit is cancellation of sale deed executed by first petitioner – first defendant in favour of second petitioner – second plaintiff. One other aspect is that the suit is of the year 2010 and, after filing written statement and additional written statement disputing various facts pleaded by the petitioners – defendants, the present I.A. has been filed at the stage of commencement of trial. The Court below, having considered the submissions of both parties, dismissed the I.A. stating that cause of action is

bundle of facts which have to be proved through trial only. The conclusion reached by the Trial Court cannot be found fault with. Though the learned Senior Counsel appearing for the petitioners pleads that the impugned order may be set aside and remanded back for fresh consideration, the conclusion arrived at by the Court below not being perverse and not being without jurisdiction, the prayer cannot be accepted. In the case of this nature, expressing any opinion allegedly would jeopardize the interest of parties. In that context, the Court below having arrived at the conclusion that the matter requires consideration and concluded that appreciation of facts, particularly, whether there is cause of action or not cannot be arrived at this stage.

The Civil Revision Petition fails and is, accordingly, dismissed. Consequently, the miscellaneous applications, if any, shall also stand disposed of.

JUSTICE CHALLA KODANDA RAM

Date: 07.11.2016
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