

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.955 of 2011

ORDER :

This Revision is filed challenging the order dt.09.02.2011 in I.A.No.3639 of 2009 in A.T.C.No.28 of 2008 of the Special Officer-cum-Principal Junior Civil Judge, Kakinada.

2. The petitioners are respondents in A.T.C.No.28 of 2008 filed by respondent herein to declare that he is a statutory tenant of petitioners in respect of the A.T.C. Schedule land.

3. Counter-affidavit was filed by petitioners opposing the said A.T.C. in which it was stated that a sale deed was executed by petitioner nos.1 to 3 in favour of 4th petitioner on 21.06.2008.

4. In view of the said counter-affidavit, an application under Order VI Rule 17 C.P.C. was filed by respondents seeking amendment of prayer in the A.T.C., contending that petitioner nos.1 to 3 cannot execute any sale deed in favour of 4th petitioner ignoring the rights of respondent, and to declare the said sale deed as void.

5. Counter-affidavit was filed by petitioners opposing the said claim, and contending that the respondent was

relying on a Will in the A.T.C., and unless the said Will is proved in accordance with law, he is not entitled to any relief in the A.T.C. There is also reference to a Civil Suit filed by the father of petitioner nos.4 and 5 against one Bandaru Pedarambabu and others. It was also denied that the respondent was in possession of property, and that the father of petitioner nos.4 and 5 was in possession of the property.

6. By a cryptic docket order dt.09.02.2011, the Court below allowed I.A.No.3639 of 2009 stating that it has perused the matter on record and taken note of the averments made in the affidavit filed along with it.

7. Challenging the same, the present Revision is filed.

8. Although the counsel for petitioners contended that no reasons were given in the impugned order and the contents of counter-affidavit filed by petitioners were also not referred to, I am of the opinion that the amendment was sought on the basis of a plea taken in the counter-affidavit by petitioners about a sale executed on 21.06.2008 in favour of 4th petitioner by petitioner nos.1 to 3. Since the respondent claims to be a statutory tenant and is also claiming a right of pre-emption under Section 15 of the Andhra Pradesh (Andhra Area) Tenancy Act, 1956, he is entitled to raise a plea questioning the said

sale transaction. It is not the case of petitioners that trial in the A.T.C. has commenced. Moreover, the contentions raised in the counter-affidavit filed by petitioners in the Court below are pleas which are available to petitioners in the main A.T.C., and they cannot be a basis to reject the application for amendment sought by respondent.

9. Therefore, I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court with the impugned order under Article 227 of the Constitution of India. Accordingly, the Revision fails and is accordingly dismissed.

10. Since the A.T.C. is of the year 2008, the Court below shall decide the same as expeditiously as possible preferably within a period of six (06) months from the date of receipt of a copy of this order after giving the petitioners an opportunity to file an additional counter.

11. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-02-2016

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