

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.1013 of 2016

ORDER :

This Revision is filed challenging the order dt.25.11.2015 in I.A.No.418 of 2015 in O.S.No.19 of 2015 on the file of Senior Civil Judge, Jangaon, Warangal District.

2. The petitioner herein is 1st defendant in the above suit.

3. The 1st respondent is her husband. He filed the suit against petitioner and others, who are said to be tenants, for partition and separate possession of the suit schedule properties and to divide the suit schedule properties between himself and petitioner.

4. In the plaint which runs into twenty-one pages he alleged that he purchased the suit schedule properties in the name of petitioner nominally; later, petitioner became disloyal and beat him indiscriminately and forced him to reside outside the house; and on 04.05.2014, discussions took place before the elders also wherein the 1st respondent had demanded petitioner to partition 'A' and 'B' schedule properties, but she refused to do so.

5. I.A.No.418 of 2015 was filed by petitioner under

Order VII Rule 11 of Civil Procedure Code for rejection of plaint alleging that the suit schedule properties are her self-acquired properties, and even otherwise the suit cannot be filed on the allegation that petitioner is *benami* for 1st respondent, since such a suit is prohibited by law; and because of matrimonial disputes between petitioner and 1st respondent, the suit has been filed to harass her.

6. Counter-affidavit was filed by 1st respondent opposing this application. He denied that the suit schedule properties are self-acquired properties of petitioner, and contended that petitioner failed to plead that she had some source of income out of which she could acquire the plaint schedule property. The 1st respondent alleged that petitioner showed indifferent attitude towards him, she was involved in some extra marital relationships also and attempted to murder him and his sons, and he was residing separately on account of threat of life.

7. By order dt.25.11.2015, the Court below dismissed the said application. It held that the question whether the properties are self-acquired properties of petitioner or not, is a matter to be gone into in trial; particularly since mixed questions of law and fact are involved and such issues cannot be decided at the preliminary stage.

8. Although counsel for petitioner sought to contend that the order passed by the Court below is not correct and the plaint ought to have been rejected by the Court below, after perusing the contents of the plaint, I am satisfied that cause of action shown in the plaint is sufficient to sustain the suit and that the suit cannot be dismissed on the ground that it did not disclose the cause of action.

9. The contention of counsel for petitioner that the suit appears to have been barred by law also cannot be accepted at this stage, since it is a mixed question of law and fact and it has to be decided after a full-fledged trial.

10. I therefore do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India. Therefore, the Civil Revision Petition fails, and it is accordingly dismissed. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 04-03-2016

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