

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2815 of 2016

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is filed by the Revision Petitioner/defendant challenging the Order dt.12.12.2015 in I.A.No.190 of 2015 in O.S.No.1069 of 2015 passed by the XIX Junior Civil Judge, City Civil Court, Hyderabad, declining to reject the plaint while exercising power under Order 7 Rule 11 r/w 151 of CPC.

2. It is the case of the respondents herein/plaintiffs that the plaintiffs filed a suit for perpetual injunction on the ground that the revision petitioner/defendant threatened to interfere with their possession and enjoyment over the suit schedule property on 05.05.2015 while contending that the plaintiffs are in lawful possession and enjoyment as on the date of filing the suit.

3. On the other hand, the revision petitioner/defendant contended that he was out of Country on that date on which he allegedly attempted to interfere, thereby, the question of threat to interfere with the possession and enjoyment of the plaintiffs on 5.05.2015 does not arise and in support of his contention, he produced Original Passport and Stamping thereon for perusal of the Court and as the cause of action in the plaint is not true, he filed an application under Order 7 Rule 11 CPC to reject the plaint on that ground alone.

4. Though notice on the respondents was served, none appeared for respondents.

5. Learned counsel for revision the petitioners while reiterating the facts urged before the Trial Court drawn the attention of this Court to Passport and Stamping thereon, which shows that the revision petitioner was out of Country and the cause of action mentioned in the plaint is not true and the trial Court committed error in dismissing the petition filed by him and he prayed to set aside the order passed by the trial Court by allowing this Civil Revision Petition.

6. Undisputedly, the respondents/plaintiffs filed the suit for perpetual injunction restraining the revision petitioner/defendant from interfering with their peaceful possession and enjoyment of the schedule property on the ground that

the revision petitioner made an attempt to interfere with their possession and enjoyment on 5.05.2015. But, the contention of the revision petitioner is that he was out of Country and produced certain documents. Such plea of absence in the Country is relevant under Section 10 of Evidence Act, but the plaint cannot be rejected on the sole ground of production of Passport and Stamp thereon. On the strength of such document, at this stage, it is difficult for any Court to conclude that he was out of Country on the specified date when the cause of action arose.

7. Order 7 Rule 11 of CPC specified the circumstances under which the plaint shall be rejected. According to the learned counsel for revision petitioner, the cause of action pleaded in the plaint is not correct and the plaint does not disclose any cause of action for the suit. A bare look at the Order 7 Rule 11-A of CPC, the plaint shall be rejected where it does not disclose the cause of action. There is a difference between plaint disclosing cause of action or truth in the cause of action, the truth in the cause of action or otherwise can be asserted only after full fledged trial but not at the stage of framing issues and the plaint cannot be rejected since the plaint discloses the cause of action, that means, which give raise to a cause to file a suit for perpetual injunction, and in various paras, the plaintiff specifically mentioned the date of cause of action i.e., threat to interfere with their lawful possession and enjoyment over the schedule property.

8. When the revision petitioner contended that the cause of action pleaded is not correct, such question shall be decided only after full fledged trial and on that ground alone, the plaint cannot be rejected since it is not covered under Order 7 Rule 11 (A) CPC or any of the Clauses contained therein. Hence, the trial Court rightly declined to reject the plaint by exercising power under Order 7 Rule 11 of CPC and it does not call for interference of this Court while exercising power under Article 227 of the Constitution of India.

9. In the result, this Civil Revision Petition is dismissed confirming the Order and Decretal Order dt. 12.12.2015 in I.A.No.190 of 2015 in O.S.No.1069 of 2015 on the file of XIV Junior Civil Judge Court, City Civil Court, Hyderabad.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 10-08-2016

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C.R.P. No.2815 of 2016

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Dt. 10-08-2016

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