

HONOURABLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITIN NO.1971 OF 2011

Date: 31.08.2017

Between:

M.A.Hakeem S/o. M.A.Raheem, Aged about 66 years,
Occu: Employee, R/o 9-14-49, Ahmedpura Colony,
Nizamabad.

.....Petitioner

and

Mohd Siddiq S/o Mohd Moinuddin, Aged about 45 yrs,
Occu: TV Mechanic, R/o. Khoja Colony, Nizamabad
and two others

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITIN NO.1971 OF 2011

ORDER:

Petitioner is the plaintiff. Plaintiff filed O.S.No.24 of 2006 on the file of Senior Civil Judge, Nizamabad, for bare injunction from interfering/dispossessing the plaintiff from the suit schedule property. Petitioner claimed owning and in possession of the suit schedule property. While so, plaintiff alleged that defendants sought to dispossess the plaintiff from the suit schedule property. Hence, plaintiff instituted the said suit.

2. Plaintiff also filed I.A.No.1073 of 2010 in the said suit praying to amend the plaint by incorporating additional paragraphs. The amendment in the prayer is to grant declaration of title and recovery of possession a portion of the suit schedule property.

3. This claim of the petitioner was contested by the respondents. Having regard to the facts of this case and proviso appended to Order VI Rule 17 of Code of Civil Procedure, trial Court declined to allow the prayer sought in the I.A., and accordingly, I.A. was dismissed. Aggrieved thereby, this revision petition is preferred.

4. Trial Court noticed that title of the petitioner is denied in the written statement, which was filed in the year 2006 itself, whereas the amendment of pleadings and the prayer is sought in the year 2010. Trial Court noticed that cause of action, even according to the petitioner, arose at the most when written statement was filed categorically denying the title claim of the petitioner. Trial Court,

therefore, observed that if amendment is allowed, it would amount to accepting the new cause of action.

5. In the affidavit filed in support of I.A., petitioner sought to contend that during the pendency of suit, from out of the suit schedule property, petitioner was dispossessed from a portion and some constructions were taken up by the defendants. If what is stated in the affidavit is true, it would be amounting to forcible dispossession during the pendency of the suit or altering the nature of the suit schedule property. As noticed above, what is sought by the petitioner was permanent injunction against interference/dispossession by the defendants. Thus, by subsequent conduct of the defendants, assuming what is alleged is true, regarding dispossession from the portion of the property and undertaking constructions, has no relevance on the claim of ownership as sought to be set up by the plaintiff. Trial Court noticed that, it is categorical assertion of the defendants that there was sale deed registered in favour of defendant no.1 executed by defendants 2 and 3. In the well considered decision of the trial Court, trial Court observed that the prayer of the petitioner cannot be considered when he failed to seek relief of cancellation of sale deed registered in favour of defendant no.1, executed by defendants 2 and 3. Trial Court noticed that when he is seeking for declaration of title, it is also essential to seek relief of cancellation of sale deed registered in favour of defendant no.1. Having regard to the peculiar facts of this case, as noted above, the decision of this Court in **Kasula Surender Reddy and another v.**

M.Ravinder Reddy and others¹, relied upon by the learned counsel for petitioner do not come to his aid.

6. Having regard to the facts of the case and in view of the language employed in proviso appended to Order VI Rule 17 of CPC, I do not see any error in the order of trial Court warranting interference by this Court. Accordingly, Civil Revision Petition is dismissed.

Miscellaneous petitions, if any, pending in this civil revision petition shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date: 31.08.2017
kkm



¹ 2016 (1) ALD 437

HON'BLE SRI JUSTICE P.NAVEEN RAO



CIVIL REVISION PETITION NO.1971 OF 2011

Date: 31.08.2017

kkm