

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

CIVIL REVISION PETITION No. 557 of 2017

ORDER:

Aggrieved by the dismissal of an application for rejection of plaint under Order VII Rule 11 C.P.C., the defendants 2 and 6 in a suit for declaration and recovery of possession have come up with the present revision.

2. Heard Mr. S. Subba Reddy, learned counsel for the petitioners, and Mr. Venkat Challa, learned counsel for the respondents 1 and 2, who are the plaintiffs.

3. The short ground, on which the petitioners/defendants 2 and 6 sought the rejection of the plaint, was that the suit was instituted by the respondents 1 and 2 herein, describing the 1st plaintiff as representing the 2nd plaintiff also, on the basis of a Special Power of Attorney. At the time of institution of the suit, an application was obviously filed under Order III Rule 2 CPC and it was allowed. But, the petitioners later found out that there was no valid Power of Attorney, on the basis of which, the 1st plaintiff could be taken to be representing the 2nd plaintiff. Hence, contending that there was no cause of action for the respondents 1 and 2/plaintiffs to institute the suit, the petitioners took out an application for rejection of the plaint. But, the trial court was not convinced. Hence, the petitioners are before me.

4. A careful look at the reliefs sought in the suit would show that the respondents 1 and 2 claim on the basis of an alleged last Will and testament, dated 06.12.2007. The 1st respondent claims to be the absolute owner of Item Nos.1 to 4 of the plaint schedule properties and the respondents 1 and 2 claim to be the joint owners of Item No.5 of the plaint schedule properties, on the basis of the very same Will.

5. At the most, even if the claim of the petitioners is accepted, it is the 2nd respondent/2nd plaintiff whose claim may be non-suited. But, the claim of the 1st respondent cannot be non-suited, on the basis of an irregularity in his seeking to represent the 2nd respondent.

6. Therefore, it is not a case for rejection of the plaint and the trial Court was right in rejecting the petition. Hence, the Civil Revision Petition is dismissed. It will be open to the petitioners to raise these points at the time of trial.

Consequently, miscellaneous petitions if any pending in the revision shall stand dismissed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

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