

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.3457 of 2016

ORDER:

The revision petitioners are the plaintiffs in O.S.No.105 of 2011 on the file of the I Additional District Judge, Kadapa. The suit is filed for the reliefs of declaration of title of the plaintiffs over the plaint schedule property with consequential relief of restraining the defendants and their men from interfering with the plaintiffs' possession and enjoyment of the plaint schedule property and for costs and other reliefs.

2. There are (7) plaintiffs and as many as (22) defendants. Out of the (22) defendants, some of them are alinees from defendant Nos.1 to 5 and 9 or so, particularly defendant Nos.13 to 22. In the trial Court, originally three issues are framed as to (1) whether the plaintiffs are entitled for declaration of their right and title over the plaint schedule property? (2) Whether the plaintiffs are entitled for permanent injunction as claimed? and (3) To what relief?

3. The defendants raised several contentions impugning the entitlement of suit reliefs by the plaintiffs. While so, after settlement of issues, the plaintiffs sought for framing of additional issues with the averments that the defendants in opposing the suit of the plaintiffs, the defendants have no right or title over the property and contesting defendants are estopped by conduct and character and from the record in claiming any interest over the suit property and their documents no way create any right in their favour and there is earlier suit

O.S.No.1091 of 2007 on the file of the Principal Junior Civil Judge, Kadapa, and the said suit was withdrawn after filing of written statement that also precludes the defendants to disputes is plaintiffs' entitlement of the suit reliefs and thereby, the additional issues sought for to be drafted. That was opposed by the defendants in their counter, saying the proposed additional issues does not arise, plaintiffs filed the suit for declaration of title and injunction may succeed on their own strength and they cannot throw burden on the defendants and once there is no counter claim from the defendants, such additional issues does not arise and the petition filed for additional issues is only to meant to drag on the proceedings and temporary injunction petition relief sought for when dismissed C.M.A. preferred, that was also dismissed by the High Court, and plaintiffs, got knowledge of their bad case, want to drag on the proceedings and the additional issues does not arise, thereby sought dismissal of the petition.

4. It is pursuant to which, the trial Court allowed the petition for framing only four additional issues in relation to the registered partition deed, dated 06.01.1972 and as to defendants are estopped by their conduct, character, record and acquiescence from disputing the plaintiffs' right and from the recitals of the sale deeds of July 2004 and as to the bar from the earlier suit O.S.No.1091 of 2007 to the present suit and whether the defendants acquired any interest over the plaint schedule property as per sale deed, dated 03.05.2008.

5. The present revision is filed by the plaintiffs impugning the trial Court's not framing all the additional issues sought for.

6. Heard both sides and perused the material on record.

7. Undisputedly, there is no counter claim from the defendants against the plaintiffs suit claim, but for opposing the plaintiffs' suit claim saying plaintiffs are not entitled to the relief of declaration and injunction sought for. Thus, it is only the plaintiffs' entitlement to the suit claim or not regarding declaration of title and consequential relief of injunction that is decisive in formulating the issues for determination of the real controversy and for several contentions raised by plaintiffs or several contentions raised by the defendants cannot form separate issues on every aspect. Once such is the case, what the plaintiffs in seeking additional issues asks is the estoppel operates against the defendants or res judicata if at all apply against the suit claim, once that is the contest that can be formulated in the very first issue of entitlement of declaration of title including from the said bar of contest and not necessary of formulating several specific issues for each aspect of contention in determination of the ultimate entitlement of relief of declaration of title and injunction.

8. Having regard to the above, by setting aside the order of the lower Court in toto, three issues framed by the trial Court referred supra are recasted as follows:

1. Whether the plaintiffs are entitled to the relief of declaration of their title over the plaint schedule property including from the contest by the defendants,

particularly of defendant Nos.1 to 5, 13 to 22, out of them some of them are claiming through defendant Nos.1 to 5 and 9 or so, as the case may be, of the plaintiffs' right to claim declaratory relief for title with consequential relief of injunction?

2. Whether the defendants are not entitled to oppose the suit claim of plaintiffs because of some of their earlier suit O.S.No.1091 of 2007 filed was after written statement filed, withdrawn or otherwise from doctrine of estoppel or acquiescence and from earlier partition deed, dated 06.01.1972 and sale deeds, dated 14.07.2004 and 19.07.2004?

3. If so, whether the plaintiffs are entitled to the consequential permanent injunction relief sought for?

4. To what relief?

9. It is made clear that the trial Court in answering the issues can formulate points of its own on each of the concepts of estoppel or extinguishment or res judicata, as the case may be.

10. Accordingly and in the result, the revision is disposed of to the above extent.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

Dr. B. SIVA SANKARA RAO, J

27th December 2017.

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