

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

Civil Revision Petition No.4990 of 2017

ORDER:

The petitioner, who is the plaintiff in the suit, has come up with the above revision challenging an order of the trial Court refusing to reject a counter claim, in terms of Order VII Rule 11 (d) of the Code of Civil Procedure.

2. Heard Mr. S. Rajabhogendranath, learned counsel for the petitioner.

3. The petitioner/plaintiff is the grandson of the respondent/defendant. The grandfather executed a gift deed dated 21-06-1999 in favour of the petitioner. Later, the respondent cancelled the same by a document dated 09.09.2009. Challenging the cancellation of the settlement deed, the petitioner filed a suit in O.S.No.121 of 2010. The respondent filed a written statement claiming that the original settlement deed was obtained by coercion, fraud and undue influence. Along with the written statement, the respondent also made a counter claim seeking cancellation of the settlement deed dated 21.06.1999.

4. Contending that there was no cause of action for the counter claim and that the counter claim was barred by limitation, the petitioner filed an application under Order VII Rule 11 of CPC, which was dismissed by the trial Court, forcing the petitioner to come up with the above revision.

5. At the outset it should be pointed out that the original gift deed was of the year 1999 and the cancellation was of the year 2009. One of the grounds of attack to the cancellation was that the

settlement had already taken effect and that there cannot be any unilateral cancellation of gift settlement. It is on account of such a plea that the respondent was constrained to file a counter claim seeking the cancellation of the gift deed. In the counter claim, the respondent has pleaded fraud, coercion etc. Therefore, the question of rejecting the claim by treating the same as a plaint, for the purpose of Order VII Rule 11 does not arise.

6. Learned counsel for the petitioner contended that the counter claim proceeds solely on the basis that original gift deed was executed to defraud the first wife and that therefore, under Section 23 of the Indian Contract Act, 1872, the very basis of the counter claim is unlawful.

7. But unfortunately, the question as to whether there was a cause of action and the question relating to limitation, are all mixed questions of fact and law. Without trial, the counter claim cannot be thrown out.

8. It is not pleaded in clear terms in the written statement that the object of the gift was for an unlawful purpose. The pleading revolves around the alleged fraud, coercion etc. Therefore, the trial Court was right in rejecting the application under Order VII Rule 11 of CPC.

9. Therefore, the Civil Revision Petition is dismissed. No costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

Date: 22-09-2017
Ksn