

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

C.R.P.No.1643 of 2017

ORDER

This Civil Revision Petition is directed against the order dated 6.2.2016 in I.A.No.421 of 2016 in O.S.No.208 of 2013 on the file of the Family-cum-VIII Additional District Court, Ongole.

Heard learned counsel appearing for the petitioner and learned counsel appearing for the caveator.

The petitioner is the 8th defendant in O.S.No.208 of 2013 on the file of the Family Court-cum-VIII Additional District Court, Ongole. The 1st respondent herein is the plaintiff, who filed the suit seeking a direction to defendants 1 to 4, 8 and 9 to execute registered sale deed in his favour in respect of the suit schedule property after receiving balance sale consideration of Rs.4,00,000/- and for a further direction to defendants 5 to 7 to produce the original agreement of sale dated 29.08.2003.

The petitioner-8th defendant filed the present I.A.No.421 of 2016 seeking rejection of the plaint under Order 7 Rule 11 of CPC with the following averments:

“It is submitted that plaintiff filed the suit camouflaging the pleadings to show as if plaintiff has got cause of action to file the suit. Entire

plaint pleadings and documents filed along with the plaint pleadings and documents filed along with the plaint clearly discloses that the plaintiff has no cause of action to file suit. Hence, the suit is liable to be rejected. The issue regarding Order 7 Rule 11 of CPC., has to be decided as a preliminary issue”.

The 1st respondent-plaintiff filed counter-affidavit with the following averments:

“The plaintiff filed the suit for specific performance of the contract and other reliefs with a document and prior notice also issued to the petitioner and no tenable reply was given by the petitioner before filing of the suit, impliedly accepting the claim of the plaintiff.

The petition is premature and no issues were framed so far, the issue U/Order 7 Rule 11 C.P.C is not at framed by the Hon’ble Court to be decided as a preliminary issue.

The suit is posted for services of notices and filing of petitions and the petitioner is not entitled to entertain the petition.”

The trial Court *vide* order dated 6.2.2017 dismissed the said application. Challenging the same, the present revision is filed.

Learned counsel appearing for the petitioner submits that there was prior arbitration in relation to the suit schedule property and an award dated 19.04.2009 was passed by the

defendants 5 to 7 and in view of the said award, suit for specific performance is not maintainable. But no such plea was taken in the affidavit filed in support of the application and the averments are vague and general in nature as extracted above.

The trial Court, after extracting the provision under Order 7 Rule 11 CPC, dismissed the application with the following observations:

“As seen from the pleadings in the plaint and the cause of action para-IV discloses that D1, D2 created sum sham and nominal documents in favour of D3, D4, D8 and D9 and also got created through unknown persons to various sale deeds dated 14.11.2011, 21.10.2012 and defendants admitted the agreement of plaintiff in various proceedings and they created the sale deed by D1 and D2 in favour of D3, D4, D8, D9 are not binding on plaintiff, plaintiff issued notice on 21.06.2013 and no reply was given and impliedly admitted and the property situated at Chirala within the jurisdiction of this Court.

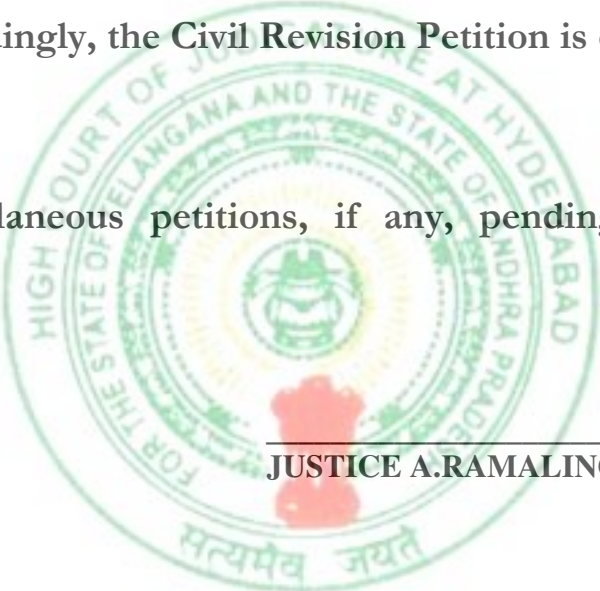
Whether the said pleas are correct or not needs to be adjudicated by this Court in the suit on contest by the petitioner/defendant No.8. This Court is of the view it is not the function of this Court to involve itself in examination of the purported question of cause of action in a minute manner and reject the plaint on such a ground at the threshold.

In the contest of the above discussion and on the touch stone of the principle laid down in the decision referred supra this Court is of the view it is not desirable to reject the plaint.”

In the light of the averments made in the affidavit filed in support of the application, this Court is of the opinion that the dismissal of the application by the trial Court for the above reasons is proper and it does not warrant any interference by this Court.

Accordingly, the Civil Revision Petition is dismissed. No costs.

Miscellaneous petitions, if any, pending shall stand closed.



JUSTICE A.RAMALINGESWARA RAO

23rd June, 2017
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