

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.3910 of 2017

ORDER:

This civil revision petition under Article 227 of the Constitution arises out of the order dated 23.03.2017 passed by the learned XIV Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, in I.A.No.816 of 2016 in O.S.No.805 of 2016. The said I.A. was filed by the sixth defendant in the suit under Order 7 Rule 11 C.P.C. seeking rejection of the plaint. By the order under revision, the trial Court dismissed the I.A. Aggrieved thereby, the sixth defendant is before this Court.

By order dated 11.08.2017, this Court granted interim stay of further proceedings in the suit.

Heard Mr. Maniklal Yadav, learned counsel for the petitioner/defendant No.6, and Mr. I.V.Siddhivardhan, learned counsel for the fourth respondent.

Perusal of the order under revision reflects that the trial Court misdirected itself as the point framed for determination was as to whether the petition under Order 7 Rule 11 C.P.C. was maintainable. The question of maintainability of such a petition would not arise and the question for consideration would only be whether the said petition is to be accepted or rejected on merits. However, para 8 of the order under revision is brief to the point of being cryptic and reads as under:

“Respondent contends that the suit property of this suit is different from the suit property involved in OS 359/2003 on the file of III Addl. Senior Civil Judge, R.R.District. Even otherwise, Order VII Rule 11 CPC does not cover the aspect of resjudicata for rejection of the plaint.”

It is brought to the notice of the Court that the first respondent/plaintiff was not even given an opportunity to file her counter to the I.A. and the trial Court straightaway dismissed the application without considering as to whether the issue raised by the sixth defendant in the suit reflected that there was no cause of action for the filing of the present suit. The trial Court ought to have adjudicated the matter on merits and given reasons as to why it did not find grounds to accept the plea of the sixth defendant.

As the exercise undertaken by the trial Court does not meet the required standard, the order under revision is set aside and the matter is remitted to the Court below for consideration afresh of the I.A. on its own merits and in accordance with law and for passing a detailed order recording reasons for its conclusion one way or the other. The trial Court shall permit the first respondent/plaintiff to file her counter and thereafter adjudicate the I.A. As this is the second round of litigation, the trial Court shall endeavour to dispose of the I.A. expeditiously and, preferably, within three weeks from the date of receipt of a copy of this order.

The civil revision petition is allowed to the extent indicated above. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE SANJAY KUMAR

20th October, 2017
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