

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.4248 OF 2017

ORDER:

This Civil Revision Petition is filed by the plaintiff under Article 227 of the Constitution of India assailing the order dated 31.07.2017 passed in I.A.No.331 of 2017 in O.S.No.278 of 2008 on the file of the Principal Junior Civil Judge at Warangal.

2. Heard the learned counsel for both the parties.

3. The facts leading to filing of the revision petition are briefly as follows: The petitioner filed O.S.No.278 of 2008 on the file of the Principal Junior Civil Judge at Warangal against respondent Nos.2 and 3 for specific performance. During pendency of the suit, the first respondent, who is a third party to the suit, filed I.A.No.331 of 2017, under Order I Rule 10 C.P.C., to implead him as defendant No.3 in the suit. The trial Court allowed the said petition. Aggrieved by the said order, the plaintiff filed the present revision petition.

4. It is the case of the petitioner that he filed the suit for specific performance on the ground that the second respondent executed an agreement of sale on 16.03.1980 in his favour. It is the further case of the petitioner that the second respondent executed a registered sale deed in favour of the third respondent on 17.11.2007. While things stood thus, the first respondent filed I.A.No.331 of 2017 in O.S.No.278 of 2008, under Order I Rule 10 C.P.C., to implead him as defendant No.3 in the suit. After passing of the orders in I.A.No.331 of 2017, first respondent died and his legal representatives are shown as respondent Nos.4 to 6 in this

revision. It is not in dispute that the petitioner, first respondent and one Polasani Laxma Reddy are own brothers. A perusal of the record reveals that the first respondent, during his lifetime, filed O.S.No.14 of 2015 against the petitioner, Laxma Reddy and the third respondent herein for declaration and consequential perpetual injunction in respect of an extent of Ac.1.22 guntas in Survey No.121/A of Obulapur @ Oglapur Village, Atmakur Mandal, Warangal District. It is not in dispute that the first respondent is a party to the agreement of sale dated 16.03.1980 and the registered sale deed dated 17.11.2007. In a suit for specific performance, the Court has to decide whether the agreement of sale in question is true, valid and binding on the defendant or not.

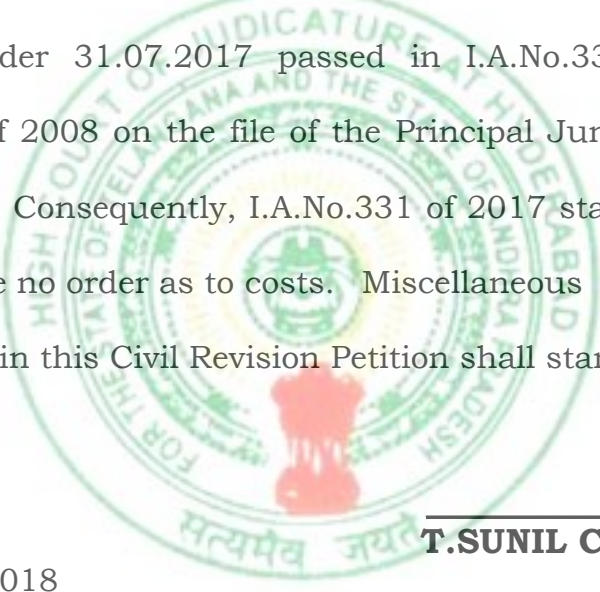
5. It is the case of the first respondent that his father purchased the suit schedule property under a simple registered sale deed dated 30.05.1980. It is the further case of the first respondent that himself, the petitioner and another brother have partitioned the joint family properties including the suit schedule property in O.S.No.278 of 2008 and O.S.No.14 of 2015.

6. The trial Court, while allowing the I.A., made an observation that there is a cloud on the title, which is not sustainable either on facts or in law. The trial Court also made an observation that the petitioner filed the suit i.e., O.S.No.278 of 2008 for declaration of agreement of sale, which is also factually incorrect as it was filed for specific performance of agreement of sale dated 16.3.1980. If the present I.A., is allowed, O.S.No.278 of 2008 for specific performance automatically converts into a suit for declaration. The suit for specific performance cannot be equated with that of a

suit for declaration. It appears that the trial Court, without considering the material available on record, allowed the I.A., on assumptions and presumptions. The trial Court failed to understand the nature and scope of the suit for specific performance. If the order of the trial Court is allowed to stand, certainly it would amount to miscarriage of justice. Viewed from factual or legal aspects, the I.A., is liable to be dismissed. Therefore, this Court is of the considered view that it is a fit case to set aside the order impugned in this revision petition.

7. In the result, the Civil Revision Petition is allowed setting aside the order 31.07.2017 passed in I.A.No.331 of 2017 in O.S.No.278 of 2008 on the file of the Principal Junior Civil Judge at Warangal. Consequently, I.A.No.331 of 2017 stands dismissed. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

Date: 28.06.2018
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**T.SUNIL CHOWDARY, J**