

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 583 of 2018

ORDER :

This Revision is directed against the order dated 27.12.2017 in I.A.No. 485 of 2017 in O.S.No. 89 of 2012 on the file of the Principal Senior Civil Judge's Court at Anantapur.

Petitioners herein are defendants 1, 2 and 4 respectively in the suit filed by Respondents 1 and 2 herein for declaring them as the absolute owners of the plaint schedule property and for cancellation of the gift deeds executed by Sri Ediga Siddappa (father of the defendants) in favour of the defendants to the extent of the plaint schedule property. The said suit is coming up for trial. It is at that stage, I.A.No.485 of 2017 under Order VII Rule 11 of the Code of Civil Procedure had been taken out to reject the suit on the ground that Respondents 1 and 2 - plaintiffs have no cause of action to pray for cancellation of the gift deed as they are not parties to the said deed and they do not have any *locus standi* to question the same. According to the petitioners, Respondents 1 and 2 have renounced their right over the suit land by way of executing gift deeds in favour of their sister Smt. B. lakshmi and selling some parcel of land in favour of the Toddy Tappers' Co-operative Society of Kammur and the Prohibition & Excise Department, erstwhile Government of Andhra Pradesh. It is their further case that the plaint also suffers from deficit Court fee. It is their further case that they along with other defendants in the suit are the absolute owners of the suit schedule property which was acquired by them by way of gift deeds executed by their father, who is none other than the senior paternal uncle of the plaintiffs.

In support of their contention, the petitioners, along with the said Application, had filed a copy of the registered gift deed No. 2345/2009, dated 05.06.2009 executed in favour of Smt. B. Lakshmi.

The plaintiffs also put-forward their case by filing a counter to the said Application. It is their case that the suit property exclusively belongs to them as it was allotted to their father and his brothers under a family partition and since then, they are in possession and enjoyment of the same. It was further stated that the gift deed dated 05.06.2009 was not acted upon and it was cancelled by executing cancellation deed dated 10.07.2017. They prayed for dismissal of the said Application as it was a frivolous and vexatious one and there were no *bona fides* on the part of the defendants.

The learned Principal Senior Civil Judge, Anantapuramu, through the order under Revision, dismissed the Interlocutory Application. He noted that the suit was filed on 17.02.2012 and the subject Application was taken up in 2017 i.e. nearly after five years, that too when the suit is coming up for trial and that no explanation whatsoever was offered by the petitioners for rejection of the suit after so long years. It has been further observed that since the suit raises so many questions of fact to be decided, as the plaintiffs attack the very gift deeds executed by Sri Siddappa, father of the defendants stating that he had no right and title, the petitioners – defendants contend that the plaintiffs do not have any *locus standi* to question their title and unless the said questions / issues are decided, the suit cannot be disposed of effectively and hence, the stand of the defendants that there is no cause of action in the suit could not be accepted.

Herd learned counsel for the petitioners as well as learned counsel for the respondents.

A perusal of the material available on record and the order under revision, discloses that there are disputed questions of fact. While it is the case of the petitioners that their father executed gift deeds in their favour and that Respondents 1 and 2 - plaintiffs, who had sold the suit property to others, have no cause of action to the suit, Respondents 1 and 2 contend that the suit schedule property fell to the share of their father during family partition on 02.08.1967. As rightly observed by the learned Principal Senior Civil Judge, the entire controversy revolves round the registered partition deed dated 02.08.1967 and the gift deeds said to have been executed by the father of the defendants and unless the documentary and oral evidence is received / considered, it would be difficult to decide the *lis* between the parties. Hence, without deciding the core issues, the suit cannot be rejected outright.

Further, admittedly, the suit was filed on 17.02.2012, the defendants filed the written statement on 25.06.2012 and issues had been framed and now, the case is at the stage of trial. The petitioners have taken up the present Application in July 2017, i.e. after five years of filing the suit. If at all the petitioners want to seek rejection of the plaint, they ought to have taken the Application at the threshold ie. immediately after they came to know the filing of the suit and that they ought not to have waited till the suit reached the stage of trial. The petitioners have not even taken any plea in that regard in the written statement also. In this context, it is useful to refer to the judgment of the Supreme Court in ***Ram Prakash Gupta v. Rajiv Kumar Gupta***¹, wherein, it has

¹ (2007) 10 SCC 59

been held that the Courts below erred in rejecting the plaint at the belated stage and without adverting to the relevant averments in the plaint. In the said case, the Application for rejection of plaint was filed after 15 years of institution of suit and that too, after filing of written statement, framing of issues and cross-examination of appellant.

Keeping in view all the above aspects, this Court, in exercise of its revisionary jurisdiction, does not find any reason warranting interference in the order under Revision.

The Civil Revision Petition is accordingly, dismissed. No costs.

02.05.2018

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CHALLA KODANDA RAM, J