

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.519 of 2018

ORDER:

This revision petition is filed under Article 227 of the Constitution of India assailing the order dated 24.11.2017 in I.A.No.857 of 2017 in O.S.No.124 of 2008 on the file of the Court of Senior Civil Judge, Medak at Sanga Reddy.

2. Heard the learned counsel appearing for both the parties.

3. The first respondent filed O.S.No.124 of 2008 against the petitioner and second respondent for specific performance of agreement of sale in respect of the suit schedule property. The petitioner, who is the first defendant in the suit filed his written statement in the year 2008. The petitioner has taken a specific plea in his written statement that the suit is hit by Section 11 CPC. During pendency of the trial, the petitioner filed a petition under Order VII Rule 11 CPC to reject the plaint. The trial Court after affording a reasonable opportunity to both parties, dismissed the petition. Hence, the revision.

4. The contention of the learned counsel for the petitioner is that the trial Court has not considered the scope of Order VII Rule 11 CPC and dismissed the petition on erroneous grounds. In order to appreciate the contention of the learned counsel for the petitioner, it is not out of place to extract hereunder Order VII Rule 11 CPC:

“The plaint shall be rejected in the following cases:

a. where it does not disclose a cause of action;

- b. where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- c. where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;
- d. where the suit appears from the statement in the plaint to be barred by any law;
- e. where it is not filed in duplicate;
- f. where the plaintiff fails to comply with the provisions of Rule 9.”

5. It is the duty of the petitioner to establish that his case falls within one of the clauses enumerated in Rule 11 of Order VII CPC. The stand taken by the petitioner will not fall within the ambit of Order VII Rule 11 CPC. Whether the suit is hit by Section 11 CPC or not is a mixed question of fact and law. So far as the factual aspects are concerned, the petitioner has to establish that the relief sought in the present suit is already adjudicated by the competent civil Court between the same parties. Whether the subject matter involved in the suit and previous suit is one and the same or not will be decided at the time of full fledged trial. Whether the suit is hit by Section 11 CPC will not fall within the ambit of Order VII Rule 11 CPC. The trial Court considered the facts of the case on hand in the light of Order VII Rule 11 CPC and rightly dismissed the petition. I am fully endorsing with the findings recorded by the trial Court. There is no illegality, irregularity and impropriety in the orders passed by the trial Court warranting interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India. There are no *bona fides* in the revision petition and the same is liable to be dismissed.

6. In the result, the Civil Revision Petition is dismissed. No order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

24th July 2018
Rns

