

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.2339 OF 2016

ORDER:

This civil revision petition is filed by the petitioner-defendant No.2, under Article 227 of Constitution of India, assailing the order dated 23.2.2016 in I.A. No.836 of 2015 in O.S. No.350 of 2008 on the file of the Court of Senior Civil Judge, Khammam.

2. Heard the learned counsel for both the parties.

3. The first respondent filed the suit against the second respondent and petitioner, defendant Nos.1 and 2 respectively, for specific performance of agreement of sale dated 06.7.2007. The petitioner and the second respondent filed written statements opposing the claim of the first respondent. The petitioner examined himself as D.W.1 for further examination. During the pendency of trial, petitioner filed I.A.No.836 of 2015 under Section 151 of CPC to reopen the matter. The petitioner also filed I.A.No.838 of 2015 to receive the document dated 15.3.2007 and I.A.No.837 of 2015 to recall D.W.1. The trial Court, after affording reasonable opportunity to both parties, dismissed the petitions. Hence, the revision petition.

4. It is the case of the petitioner that the second respondent executed agreement of sale in his favour on 15.3.2007 and the same was traced after examining himself as D.W.1. As rightly pointed out by the learned counsel for the first respondent-plaintiff, the petitioner did not take specific plea in his written statement that the second respondent executed agreement of sale in his favour on 15.3.2007 in respect of the suit schedule property. There is no whisper in the testimony of the petitioner, who was examined

as D.W.1, that the second respondent executed agreement of sale in his favour. I have carefully perused the affidavit filed by the petitioner before the trial Court in support of the petition. There is no mention in the affidavit that the second respondent executed agreement of sale in favour of the petitioner on 15.3.2007 in respect of the suit schedule property. The affidavit filed by the petitioner is bereft of the basic ingredients. In the absence of any foundation with regard to execution of agreement of sale dated 15.3.2007 by the second respondent in favour of the petitioner either in the written statement or in the affidavit, the question of allowing the petition does not arise. The alleged agreement of sale has not seen the light of the day till filing of the petition. The first respondent has taken specific plea in the counter that the petitioner created agreement of sale with an ulterior motive to deprive his legal and legitimate rights. The possibility of creating such a document cannot be ruled out in view of non-taking of such a plea either in the written statement or in the affidavit filed by the petitioner. The trial Court considered all these aspects and dismissed the petition. The trial Court has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing the findings recorded by the trial Court. There is no illegality or irregularity in the impugned order warranting interference of this Court.

5. In the result, the civil revision petition is dismissed. Miscellaneous petitions if any pending in this petition shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 02.8.2018
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