THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

CIVIL REVISION PETITION NO.1573 OF 2018

DATED:09-03-2018

Between:

Yellapu Venkata Rao
and others … Petitioners

And

Davuluri Satyavathi
and others … Respondents

COUNSEL FOR THE PETITIONERS: Mr. Ravi Cheemalapati

COUNSEL FOR RESPONDENT No.1: Mr. S. Subba Reddy
COUNSEL FOR RESPONDENT Nos.2 and 3: -

THE COURT MADE THE FOLLOWING:

ORDER:

This civil revision petition arises out of order dt.19.01.2018 in I.A. No.135 of 2016 in O.S. No.428 of 2012 on the file of the VII Additional District Judge (Fast Track Court), Visakhapatnam, whereby she has dismissed the I.A. filed by the petitioners for framing additional issues.

2. The petitioners filed the aforementioned suit for declaration of title and recovery of possession of the plaint schedule property. In the written statement itself the respondents have set up title in themselves. Based on the respective pleadings and after considering the draft issues submitted by the counsel for the respective parties, the Court below has framed the following issues.

1. "Whether the name of the mother of the 1st plaintiff was Yellapu Atchiyyamma @ Parvathamma or Yellapu Atchiyamma alone?
2. Whether the first plaintiff father had any land in S.No.46/6 of Maddilapalem village and if so whether Ac.3.13 cents in S.No.46/6 of Maddilapalem Village is part of Ac.8.00 cents purchased by him under the registered sale deed dated 15.05.1926 and whether he was in possession of the same?
3. Whether the plaintiffs have got title to the schedule property and entitled for declaration as sought for?
4. Whether the plaintiffs had possession of the plaint schedule property before filing of the suit and if so, whether defendant No.1 trespassed the same?
5. Whether the plaintiffs are entitled for the consequential relief of recovery of possession as sought for?
6. Whether the plaintiffs are entitled for permanent injunction as prayed for?
7. Whether the suit is bad for non-joinder of proper and necessary parties?
8. Whether the suit has non cause of action?

9. Whether the GPA Holder of the plaintiffs namely E. Gurunatham Sastry is not competent to file the present suit having no personal knowledge about the case facts?
10. Whether the Court fee paid by the plaintiffs is not correct?"

After commencement of the trial and the petitioners examined P.Ws.1 and 2, they have filed the aforementioned I.A. with the prayer as noted above. The Court below, however, dismissed the said application by stating that the additional issues are not necessary as based on the existing issues the petitioners have to succeed on the strength of their own case and not on the weakness of the case of the respondents.

3. At the hearing, Mr. Ravi Cheemalapati, learned counsel for the petitioners, relied upon the judgment in **Syed Mahmood v. Dr. Manik Chandra**[1] in support of his submission that when the defendant has set up title in himself, it is incumbent upon the trial Court to frame specific issues in that regard.

4. The law is well-settled that the plaintiff has to succeed on the strength of his own case and not on the weakness of the defendant's case (See **Moran Mar Basselios Catholocos and Another v. The Most Rev. Mar Poulose Athanasius and Others**[2]). As could be seen from the issues framed by the lower Court as extracted hereinbefore, the third issue was

[1] 1995(3) ALD 1192
[2] AIR 1954 SC 526

whether the plaintiffs got title to the schedule property and entitled for declaration as sought for. Even in the absence of a specific issue as to the defendants' title, the Court can deal with the issue to know as to who between the two parties has a better title. In this view of the matter, I do not find any reason for the petitioners to seek framing of additional issues at this length of time.

5. Subject to the above observations, the civil revision petition is dismissed.

As a sequel to dismissal of the civil revision petition, I.A. No.1 of 2018 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

09-03-2018

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