

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.2186 of 2017

ORDER:

This revision petition is filed under Article 227 of the Constitution of India challenging the orders dated 28.12.2016 in SR No.3780 of 2016 on the file of the Court of Principal Junior Civil Judge, Khammam.

2. Heard the learned counsel for the petitioner and perused the material on record.

3. The petitioner herein filed the suit against the respondents herein seeking relief of specific performance. The trial Court numbered it as O.S.No.13 of 2017 so far as first respondent is concerned. The trial Court made an observation that there is no privity of contract between the petitioner and respondents No.2 to 7 and declined to register the suit against them. No doubt, the first respondent alone executed an agreement of sale in favour of plaintiff. As per the averments made in the plaint, D2, Manmadha Rao and D6 executed an agreement of sale in favour of D1. As per the averments made in the plaint, D2, Manmadha Rao and D6 executed a sale deed in favour of D7. The record reveals that D1 executed agreement of sale in favour of petitioner. The subject matter involved under two agreements of sale and the sale deed is one and the same. It is needless to say the Court has to number the suit basing on the averments made in the

plaint. The Court ought not to have consider the merits or demerits of the averments made in the plaint at the time of numbering of the suit.

4. To substantiate the arguments, learned counsel for the petitioner has drawn attention of this Court to the decision reported in **Mir Firasath Ali Khan v Sayeeduddin Zafar**¹ wherein it was held at paragraphs No.10 and 11 as follows:

10. In the afore stated scheme, there is no power vesting in the trial Court at the time of registration of the suit to venture into the merits of the matter or possible disputed issues. In the present case, the objection raised by the office of the trial Court, which was thereafter sustained by the trial Court, is that the suit prayer relates to a larger extent than can be claimed by the petitioner-plaintiff as per the suit agreement. This is not an issue which could have been gone into by the trial Court at the time of registration of the plaint. It is for the petitioner-plaintiff to demonstrate before the trial Court during the suit proceedings as to how he is entitled to such relief. When he valued the property in question fully and properly and paid requisite Court fee thereon, the trial Court had no power to determine as to the extent of relief that could be claimed by him at the very threshold and require him to amend his suit prayer accordingly.

11. It may be noticed that it is not the case of the trial Court that the plaint did not disclose any cause of action whereby it could have rejected the plaint under Order 7 Rule 11 CPC. In fact, it did not even do so. It merely returned the plaint requiring the petitioner-plaintiff to restrict his prayer to a lesser extent.

5. The facts of the case on hand are almost identical to the facts of the case cited supra.

6. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited

¹ 2018(3) ALD 426

supra, the Civil Revision Petition is allowed setting aside the docket orders dated 28.12.2016 in SR.No.3780/2016 on the file of the Court of Principal Junior Civil Judge, Khammam. The learned Principal Junior Civil Judge, Khammam is hereby directed to register the suit against the respondents No.2 to 7 if it is otherwise in order. Consequently, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

8th June 2018
Rns



