

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.4214 of 2017

ORDER:

This revision petition is filed under Article 227 of the Constitution of India challenging the order dated 11.08.2017 passed in CFR No.4237 of 2017 on the file of the Court of III Additional District Judge, Tirupathi.

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

3. A perusal of the record reveals that the petitioner presented the plaint before the trial Court for declaration and perpetual injunction in respect of the plaint schedule property. The trial Court returned the plaint on the ground that the plaintiff has to file succession O.P. Hence, the revision.

4. A perusal of the record reveals that the petitioner presented the plaint seeking the reliefs of declaration and perpetual injunction. The plaint schedule property consists of two schedules. Schedule 'A' is movable property i.e. deposit lying in the bank. Schedule 'B' is the immovable property. The petitioner is claiming declaration basing on the Will dated 28.04.2015. When the plaint is filed in respect of movable and immovable properties, the Court cannot compel the petitioner to file succession O.P.

5. In order to appreciate the contention of the learned counsel for the petitioner, this Court is placing reliance on the

decision 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.

6. As per the principle enunciated in the cases cited supra, the Court shall not conduct a roving enquiry at the time of registering the suit. The Court has to consider the averments made in the plaint only.

7. Taking into consideration the facts and circumstances of the case, I am of the considered view that the impugned order is not sustainable either on facts or in law.

8. Hence, the C.R.P. is allowed setting aside the order dated 11.08.2017 passed in C.F.R.No.4237 of 2017 on the file of the Court of III Additional District Judge, Tirupathi. The trial Court is hereby directed to number the suit if it is otherwise in order. The Registry is directed to return the original documents to the

¹ 2018(3) ALD 426

petitioner under proper acknowledgment. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

16th July 2018
Rns

