

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.184 of 2017

ORDER:

This civil revision petition is filed by the petitioner-plaintiffs, under Article 227 of Constitution of India, assailing the order dated 19.8.2016 passed in C.F.R. No.7072 of 2016 on the file of the Court of Principal District Judge, Kurnool.

2. Heard the learned counsel for both the parties.

3. The petitioners presented the plaint (C.F.R. No.7072 of 2016) on the file of the Court of Principal District Judge, Kurnool, seeking partition of the suit schedule property. In the plaint, the petitioners mentioned that defendant No.2 filed O.S.No.102 of 2013 on the file of the Principal District Court, Kurnool. The trial Court, by the impugned order, returned the plaint with a liberty to the petitioners to implead themselves as party defendants in O.S.No.102 of 2013. Hence, the revision.

4. In order to appreciate the contention of the learned counsel for the petitioners, 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.

¹ 2018(3) ALD 426

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. As per the principle enunciated in the case 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. The Court cannot decide the merits or demerits of the case at the time of registration. Simply because the petitioner mentioned the pendency of O.S.No.102 of 2013 filed by the second defendant, that itself is not a valid ground to return the plaint granting liberty to file petition under Order I Rule 10 of CPC in O.S.No.102 of 2013.

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

7. Accordingly, the civil revision petition is allowed, setting aside the order dated 19.8.2016 in C.F.R.No.7072 of 2016 on the file of the Court of Principal District Judge, Kurnool. The learned Principal District Judge, Kurnool is hereby directed to number the suit, if C.F.R.No.7072 of 2016 is otherwise in order. Miscellaneous petitions, if any pending in this petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 20.7.2018
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