

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.448 of 2017

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, assailing the order dated 26.8.2016 in I.A.No.1622 of 2014 in O.S. No.588 of 2009 on the file of the Principal Junior Civil Judge Court, Ananthapuramu.

2. Heard the learned counsel for both the parties.

3. The facts leading to filing of the present revision are briefly as follows: The petitioner filed O.S.No.588 of 2009 against the respondent-defendant No.6 and five others for specific performance of agreement of sale and perpetual Injunction. The respondent filed written statement, wherein she made a counter-claim with the following averments: Originally the suit schedule property belongs to defendant Nos.1 to 3, who agreed to sell the suit schedule property to defendant Nos.4 and 5 and entered into agreement of sale to that effect. Thereafter, the respondent along with the petitioner entered into agreement of sale with defendant Nos.4 and 5 in respect of the suit schedule property and the respondent in all paid Rs.80,900/- towards her half-share; therefore, the respondent is entitled to half-share in the suit schedule property. After making the counter-claim by the respondent, the petitioner filed the present petition under Order VIII Rule 6C of CPC for exclusion of the counter-claim. The respondent filed counter *inter alia* contending that the present petition is not maintainable either on facts or in law. The trial Court, after affording reasonable

opportunity to both parties, dismissed the petitioner. Hence, the revision.

4. In order to appreciate the rival contentions, it is not out of place to extract hereunder Order VIII Rule 6C of CPC, which reads as follows:

Order VIII. Written Statement, Set-off and counter-claim

6C.Exclusion of counter-claim.—Where a defendant sets up a counter-claim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counter-claim, apply to the Court for an order that such counter-claim may be excluded, and the Court may, on the hearing of such application make such order as it thinks fit.

5. The above provision makes it clear that a petition under Order VIII Rule 6C of CPC has to be filed before settlement of the issues. A perusal of the record reveals that the respondent filed counter-claim on 13.9.2010 and the issues were settled by the trial Court on 09.5.2014. The record further reveals that the petitioner filed the present petition after framing of the issues. The trial Court dismissed the petition on the ground that the petition is not maintainable after framing of the issues. While arriving at such a conclusion, the trial Court placed reliance on the decision of the Hon'ble apex Court in **Jag Mohan Chawla v Dera Radha Swami Satsang**¹. The finding recorded by the trial Court is sustainable in view of Order VIII Rule 6C of CPC and the decision of the Hon'ble apex Court cited above. 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, irregularity or impropriety in the impugned order, which

¹ AIR 1996 SC 2222

warrants interference of this Court, while exercising the jurisdiction under Article 227 of the Constitution of India.

6. Hence, the civil revision petition is dismissed. Miscellaneous petitions, if any pending in this revision shall stand closed.

T.SUNIL CHOWDARY, J

Date: 04.12.2018

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