

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.2270 of 2018

ORDER:

This revision petition is filed under Article 227 of the Constitution of India assailing the orders dated 05.10.2017 passed in I.A.No.224 of 2015 in O.S.No.57 of 2014 on the file of the Court of Junior Civil Judge, Rajampet, Kadapa District.

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

3. The facts leading to filing of the present revision in brief are as follows: The first respondent herein filed O.S.No.57 of 2014 on the file of the Court of Junior Civil Judge, Rajampet, against the petitioner herein and respondents No.2 and 3 seeking declaration to declare him as the owner of the suit schedule property. Pending suit, the petitioner herein filed I.A.No.224 of 2015 under Order VII Rule 11(A) of CPC to reject the plaint. The first respondent filed counter opposing the petition. Respondents 2 and 3 herein did not choose to file counter in the I.A.No.224 of 2015. The trial Court after affording reasonable opportunity to both parties, dismissed the petition. Hence, the petitioner filed the present revision petition.

4. Learned counsel for the petitioner strenuously submitted that the trial Court misconstrued the scope of Order VII Rule 11(A) of CPC and dismissed the petition. He further submitted that if the order of the trial Court is allowed to stand, certainly it would amount to miscarriage of justice.

5. Now, the point that arises for consideration is:

“Whether the order of the trial Court is sustainable neither on facts nor in law?

6. A perusal of the record reveals that the petitioner herein filed O.S.No.121 of 2005 on the file of the Court of Senior Civil Judge, Rajampet against the second respondent and one Mummadi Ravindranadh Reddy for partition of the suit schedule property. A preliminary decree was passed in favour of the petitioner herein in O.S.No.121 of 2005. The first respondent herein purchased properties from the family members of respondents 2 and 3. The petitioner filed a petition under Order VII Rule 11(A) of CPC in O.S.No.57 of 2014. In order to appreciate the contention of the learned counsel for the petitioner, it is not out of place to extract the relevant portion of Order VII Rule 11(a) CPC.

“11. Rejection of plaint: The plaint shall be rejected in the following cases:

- (a) where it does not disclose a cause of action;
- (b) to (d).....”

7. As per the contention of the petitioner, his case will fall within the ambit of clause ‘a’ of Order VII Rule 11 CPC. It appears, the petitioner by mistake mentioned ‘A’ instead of ‘a’.

8. I have carefully perused the affidavit filed in support of the petition before the trial Court. There is no mention in the affidavit that there is no cause of action in favour the first respondent herein to file the suit.

9. At the time of arguments, learned counsel for the petitioner in all fairness submitted that by mistake, the petitioner did not mention in the affidavit that there is no cause of action to file the suit. It is needless to say that the edifice of the civil suit is based on pleadings. Any amount of arguments without pleading is of no

avail. When the petitioner himself has not pleaded in the affidavit that there is no cause of action in favour of the first respondent to file the suit, this Court is unable to understand how the petitioner filed a petition under Order VII Rule 11(a) CPC. Even if the averments made in the affidavit are taken to be true and correct, the same will not fall within the ambit of Order VII Rule 11(a) CPC. Establishment of ingredients of Order VII Rule 11(a) CPC is *sine qua non* to entertain the petition. The petitioner miserably failed to prove the ingredients of Order VII Rule 11(a) CPC. Therefore, I am unable to accede to the contention of the learned counsel for the petitioner that the trial Court misconstrued the scope of Order VII Rule 11(a) of CPC. The trial Court rightly considered the scope of Order VII Rule 11(a) of CPC and dismissed the petition. The trial Court has assigned reasons much less valid reasons. I am fully endorsing with the findings recorded by the trial Court.

10. Taking into consideration the facts and circumstances of the case, I am of the considered view that there is no illegality or irregularity in the orders passed by the trial Court, which warrants interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India. The revision petition lacks merits and *bona fides* and the same is liable to be dismissed.

11. Accordingly, Civil Revision Petition is dismissed at the stage of admission. As a sequel, the miscellaneous petitions, pending if any in this revision, shall stand closed.

T.SUNIL CHOWDARY, J

13th April 2018
Rns