

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.2300 of 2018

ORDER:

This civil revision petition is filed by the petitioners-plaintiffs under Article 227 of the Constitution of India assailing the order dated 21.3.2018 in I.A.No.136 of 2018 in O.S.No.1 of 2009 on the file of the Court of Junior Civil Judge, Sidhout.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in I.A. No.136 of 2018.

3. The facts leading to filing of the present civil revision petition are briefly as follows:

The petitioners filed O.S.No.1 of 2009 on the file of the Court of Junior Civil Judge, Sidhout, seeking perpetual injunction against the respondents in respect of the suit schedule property. When the matter is coming up for arguments, the petitioners filed I.A.No.136 of 2018 under Section 151 of CPC seeking to reopen the suit. Respondent Nos.2 and 3 filed counter opposing the petition. The trial Court, after hearing both sides, dismissed the petition. Hence, the petitioners filed the revision.

4. The learned counsel for the petitioners submitted that the trial Court, without considering the material available on record, dismissed the petition on assumptions and presumptions. He further submitted that the findings recorded by the trial Court are not sustainable either on facts or in law.

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

Whether the order under challenge is not sustainable?

Point

6. It is not in dispute that the petitioners filed O.S.No.1 of 2009 on the file of the Court of Junior Civil Judge, Sidhout seeking perpetual injunction against the respondents in respect of the suit schedule property. The matter is coming up for arguments. At that stage, the petitioners filed the present petition to reopen the suit thereby enable them to file the petition for framing the following additional issues:

- (1) Whether the unregistered agreement dated 09.1.2002 is a forged one and it is barred by limitation?
- (2) Whether the Will dated 16.8.2001 is valid and accepted upon the parties of the Will? Or it is a forged one?
- (3) Whether the suit is bad for non-joinder of necessary party?
- (4) To what relief?

7. It is needless to say that a person, who seeks the relief of perpetual injunction, has to establish that he has been in possession and enjoyment of the suit schedule property much less as on the date of filing of the suit. The respondents filed written statement way back in the year 2009 taking a specific plea that the agreement of sale dated 09.1.2002 produced by the petitioners is a forged one. Since 2009, the petitioners are very much aware of the stand taken by the respondents in their written statement. The respondents are claiming the property basing on the Will dated 16.8.2001. The petitioners have not filed rejoinder disputing the Will set up by the respondents. The petitioners kept quiet for a period of nine years. The petitioners have not assigned reasons much less cogent and valid reasons for non-filing of petition at the earliest point of time preferably before commencement of the trial.

8. A perusal of the record reveals that the petitioners have not filed any petition seeking recasting of the issues along with reopening petition. This clearly indicates that the petitioners filed the present petition with an ulterior motive to drag on the proceedings. The trial Court considered the material available on record in right perspective and dismissed the petition. The trial Court has assigned reasons much less cogent and valid reasons to its findings. I am fully agreeing with the findings recorded by the trial Court. There is no illegality or irregularity in the impugned order, which warrants interference of this Court.

9. Accordingly, the civil revision petition is dismissed as withdrawn. Miscellaneous petitions, if any, pending in this revision petition shall stand closed.

April 13, 2018.
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T.SUNIL CHOWDARY, J

