

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.3723 of 2016

ORDER:

This civil revision petition is filed by the petitioners-defendants under Article 227 of Constitution of India, assailing the order dated 02.6.2016 passed in I.A.No.625 of 2015 in O.S.No.93 of 2009 on the file of the Court of the Principal Senior Civil Judge, Ananthapuramu.

2. Heard the learned counsel for both the parties.

3. A perusal of the record reveals that the respondent herein filed O.S. No.93 of 2009 on the file of the Court of the Principal Senior Civil Judge, Ananthapuramu against the petitioners for declaration, recovery of the suit schedule property and mandatory injunction. Pending suit, the petitioners filed the interlocutory application under Section 151 of CPC to dismiss the suit as infructuous. The trial Court, after affording reasonable opportunity to both the parties, dismissed the petition. Hence the revision.

4. Now the point that arises for consideration is:

Whether there is any illegality, irregularity or impropriety in the impugned order?

5. In a suit for declaration, the plaintiff may succeed or fail basing on strength or weakness of his case. It is equally settled principle of law that the plaintiff is not entitled to the relief of declaration basing on laches or weaknesses on the part of the defendants. In the instant case, the respondent-plaintiff filed the suit to declare him as owner of the suit schedule property. During the course of cross-examination, P.W.1 (respondent) admitted that

he sold the property under Ex.B.1 on 02.7.2012 in favour of one Chinna Krishna Reddy. On coming to know about this, the petitioners have not taken any steps even to implead said Chinna Krishna Reddy. It is needless to say that Section 52 of the Transfer of Property Act takes care of the transfers made by the parties to the proceedings during the pendency of the suit. Whether the property covered under Ex.B1 and the suit schedule property is one and the same is to be considered after completion of the full-fledged trial in the suit. There is no provision in the Code of Civil Procedure entitling the defendant to file an application under Section 151 of CPC to dismiss the suit as infructuous. Mere non-obtaining of the leave by itself is not a valid ground to dismiss the suit without considering the merits of the main case. The trial Court considered the scope of Order XXII Rule 10 of CPC and Section 151 of CPC and dismissed the petition. The trial Court 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.

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

T.SUNIL CHOWDARY, J

Date: 10.7.2018
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