

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

* * * *

CIVIL REVISION PETITION NO.2523 OF 2018

Mir Firasath Ali Khan	.. Petitioner
Vs.	
Sayeeduddin Zafar	.. Respondent

DATE OF JUDGMENT PRONOUNCED: 25th April, 2018

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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|--|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the judgment? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/ Journals | Yes/No |
| 3. Whether Their Lordships wish to see the fair copy of the judgment? | Yes/No |

SANJAY KUMAR, J

* THE HON'BLE SRI JUSTICE SANJAY KUMAR
+ CIVIL REVISION PETITION NO.2523 OF 2018

% DATED 25th APRIL, 2018

Mir Firasath Ali Khan .. Petitioner

Vs.

\$ Sayeeduddin Zafar .. Respondent

< Gist:

> Head Note:

! Counsel for petitioner : Sri D. Vijaya Kumar

^ Counsel for respondent : --

? CASES REFERRED:

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THE HON'BLE SRI JUSTICE SANJAY KUMAR
CIVIL REVISION PETITION NO.2523 OF 2018

ORDER

The petitioner in this civil revision petition is the plaintiff in OS SR No.887 of 2018 on the file of the learned XII Additional District and Sessions Judge, Ranga Reddy at Vikarabad. The said suit was filed with the following prayer:

- i) Directing the defendant to execute and register a sale deed in favour of the plaintiff in respect of the suit schedule property i.e., land admeasuring Ac.3-30 guntas in Sy.No.4 and land admeasuring Ac.2-00 guntas in Sy.No.6 total admeasuring Ac.5-30 guntas situated at one Compact at Shaipur Village under the Limits of Tandur Municipality, Tandur Mandal, R.R.District (presently Vikarabad District), which is more fully described in the plaint schedule.
- ii) And in the event the defendant failed to execute and register the sale deed in favour of the plaintiff in respect of the suit schedule property, this Hon'ble Court may be pleased to execute and register the sale deed in favour of the plaintiff and put the plaintiff in possession of the suit schedule property.
- iii) To award the costs of the suit, and
- iv) To any other relief or reliefs for which the plaintiffs entitled to may also be awarded in the circumstances of the case and interest of justice.'

The office of the trial Court raised an objection on 04.04.2018, which reads as under:

'C.F.R.No. _____ of 2018 dated 4-4-2018

This is a suit file under section 26 order 7 rule 1 and 2 C.P.C, suit for specific performance in respect of land bearing Sy.Nos.4, extent Ac.3-30, in survey number 6 extent Ac.2-00 situated at Saipur village of Tandur Mandal as per the agreement of sale dated 17-2-2015

The agreement of sale dated 17-2-2015 is executed only for an extent of Ac.2-00 in survey number 6 situated at Shaipur village, but the plaintiff praying to this Court for directions to the defendants to execute registered sale deed in favour of the plaintiff to an extent of Ac.5-30 guntas in Sy.No.4 and 6.

How the suit is maintainable for claiming Ac.5-30 guntas against the agreement of sale dated 17-2-2015 filed in this suit.

Hence the Plaint is returned.

SFO

Returned. Time (7) days.'

Thereupon, the petitioner-plaintiff re-submitted the suit stating as follows:

'Objections complied herewith. Hence resubmitted.

4-4-2018

The suit is filed for specific performance as per the agreement of sale dated 17-2-2015 and as per clause No.4 of agreement of sale he agreed to sale his other property covered with Memorandum of Confirmation of Oral Hiba dated February 2015 and executed on 18/04/2015 for remaining land of the defendant.

Hence the suit is maintainable as per the agreement and receipt.

Hence resubmitting.

Sd/-
04/04/2018'

The office however opined that the objections required to be heard on two points:

(1) The point of limitation

(2) How the suit for the entire schedule of property Ac.5-30 guntas is maintainable, when the Agreement of Sale is for Ac.2-00 guntas and another receipt is for Ac.2-00 guntas.'

The matter was accordingly directed to be posted for hearing on the Bench and, by order dated 12.04.2018, the trial Court returned the suit stating as under:

'Heard the counsel for plff, the agreement of sale is executed to an extent of Ac.2.00 in Sy.No.6, and clause no.4 in the agreement of is pertaining to remaining portion of his land i.e. 3.30 gts in Sy.No.4 and the 1st party assures second party after completion of

sale transaction under agreement of sale dt.17/2/2015 only the future transaction takes place. Therefore suit is not maintainable to the entire extent of Ac.5.20 gts and it is maintainable to extent of Ac.2.00 only in Sy.No.6 only. Hence counsel is directed to restrict his prayer to the extent of two acres only.'

Aggrieved by the direction to restrict his suit prayer as a condition precedent for entertainment of the suit, the petitioner-plaintiff is before this Court.

Section 26 CPC deals with institution of suits and states that every suit shall be instituted by the presentation of a plaint and that, in every plaint, facts shall be proved by affidavit. Order 7 CPC deals with the plaint. Order 7 Rule 1 details the particulars to be contained in the plaint. Order 7 Rule 7 requires the relief sought to be specifically stated in the plaint. Order 7 Rule 10 CPC deals with the return of the plaint at any stage if it has been presented before the wrong Court. Order 7 Rule 11 details the situations where the plaint can be rejected by the trial Court. This Court, in exercise of its power under Article 227 of the Constitution and Section 126 CPC, framed the Andhra Pradesh Civil Rules of Practice and Circular Orders 1980 (*hereinafter*, 'The Civil Rules of Practice'). Chapter II of the Civil Rules of Practice deals with the 'Form of Proceedings'. Rule 8 therein deals with the form of the plaint etc. Rule 9 speaks of the cause title of the plaint etc. Rule 10 deals with the names etc. of the parties. Rule 11 deals with address for service. Rule 12 deals with suits by or against numerous parties. Rule 14 deals with proceedings in respect of immovable property and reads as under:

'Proceedings in respect of immovable property:-

Every plaint, original petition and memorandum of appeal, in which relief is sought with respect to immovable property, shall state, as part of the description thereof the registration district, sub-district, the name of the village, Municipality or Corporation in which the property is situate, the survey number of the house number, if any, the market value of the property and the value for

purpose of court-fee and jurisdiction as computed according to the provisions of the Andhra Court Fees and Suits Valuation Act, 1956 and in cases where the court-fee payable on the rental value, the annual rental value of the property for which it is let, and there shall be annexed thereto a statement duly filled in and signed by the party of the particulars mentioned in Form No.8. In the absence of the said particulars, the proceedings may be received but shall not be admitted or filed until the provisions of this rule have been complied with.'

Rule 16 deals with the list of documents to be filed along with the plaint. Rule 20 deals with the presentation of proceedings and reads as under:

'20. Presentation of Proceedings:-

(1) All plaints, written statements, applications, and other proceedings and documents may be presented to or filed in court by delivering the same by the party in person or by his recognised agent or by his Advocate or by a duly registered clerk of the Advocate to the Chief Ministerial Officer of the Court or such other officers as may be designated for the purpose by the Judge before 4.00 p.m. on any working day. Provided that in case where the limitation expires on the same day they may be received by a Judge even after 4.00 P.M.

(2) The Officer to whom such documents were presented shall at once endorse on the documents the date of presentation, the value of the stamp fixed, and if the proceedings, are thereby instituted, shall insert the serial number.

(3) In case of paper bearing court fee stamps, he shall, if required issue a receipt in form No.17 in Appendix III-L to these rules.

(4) Every plaint or proceeding presented to or filed in court shall be accompanied by as many copies on plain paper of the plaint or proceeding and the document referred to in Rule 16, as there are defendants or respondents unless the court otherwise dispenses with such copies of the documents by reason of their length or for any other sufficient reason.'

Rule 23 states that where, upon examination, the plaint is found to be in order, it shall be entered in the register of suits, and the Judge shall pass orders as to the issue of summons or otherwise.

In the aforesaid 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.

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.

The order dated 12.04.2018 passed by the trial Court to this effect is therefore unsustainable in law and is accordingly set aside. The trial Court is directed to examine the plaint presented by the plaintiff only in the context of the parameters prescribed in the Code of Civil Procedure, 1908, and the Civil Rules of Practice and if it is found to be in order, register the same as per Rule 23 of the Civil Rules of Practice.

The civil revision petition is accordingly allowed. Pending miscellaneous petitions, if any, shall also stand closed. No costs.

SANJAY KUMAR, J

25th APRIL, 2018

Note: (1) L.R. copy to be marked.

(2) Issue CC tomorrow.

(3) Registry is directed to return the original docket order.

(B/o) PGS