

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.5520 OF 2016

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 22.01.2016 passed in I.A.No.866 of 2015 in O.S.No.163 of 2012 on the file of II Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar.

2. Heard the learned counsel for both parties.

3. A perusal of the record reveals that the respondent filed O.S.No.163 of 2012 on the file of II Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, against the petitioner for declaration, recovery of possession, mandatory injunction and consequential permanent injunction in respect of the suit schedule property. The petitioner filed a written statement opposing the claim of the respondent. During the course of trial, the petitioner filed I.A.No.866 of 2015, under Order VII Rule 11 read with Section 151 C.P.C. to reject the plaint. The trial Court dismissed the said interlocutory application on merits after affording a reasonable opportunity to both parties to put forth their submissions. Hence, the revision.

4. The point that arises for consideration is:

Whether there is any illegality, irregularity or impropriety in the order of the trial Court?

5. Learned counsel for the petitioner strenuously submitted that the respondent filed the suit without any cause of action that

itself is a valid ground to reject the plaint. He further submitted that the trial Court misconstrued the scope of Order VII Rule 11 C.P.C. and dismissed the petition.

6. In order to appreciate the rival contentions, this Court is placing reliance on the following decisions:

Mayar (H.K.) Ltd. Vs. Vessel M.V. Fortune Express¹,

wherein it is held at para No.12 as follows:

“12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct.”

Kuldeep Singh Pathania Vs. Bikram Singh Jaryal²,

wherein it is held at para No.7 as follows:

“.....In other words, under Order 7 Rule 11, the court has to take a decision looking at the pleadings of the plaintiff only and not on the rebuttal made by the defendant or any other materials produced by the defendant.”

7. Let me consider the facts of the case on hand in the light of the above legal principles.

¹ (2006) 3SCC 100

² (2017) 5 SCC 345

8. It is an admitted fact that the respondent filed O.S.No.163 of 2012 against the petitioner seeking for declaration, recovery of possession, mandatory injunction and consequential perpetual injunction in respect of the suit schedule property. It is needless to say that the Court has to consider the averments made in the plaint while disposing of the applications filed under Order VII Rule 11 C.P.C. Suffice it to say that the Court cannot conduct a roving enquiry touching the merits of the main case while deciding the applications filed under Order VII Rule 11 C.P.C.

9. In order to appreciate the contention of the learned counsel for the petitioner, it is apt to extract hereunder the cause of action portion:

“CAUSE OF ACTION: The cause of action arose first time on 10.01.2012 when the plaintiff purchased the suit schedule properties i.e., A & B through registered sale deeds, in turn the plaintiff vendors purchased the suit schedule properties on 14.09.1981 from the Shastripuram Co-operative society and was inducted into the possession of the property. Secondly on 15.01.2012 the defendants interfered and trespassed into the suit schedule properties and the same was informed to the police concerned and police directed both the parties to submit the title deeds orally but the defendant had not produced and not turned up. The police declined to acknowledge the same, on that the plaintiff gave a complaint to the Commissioner of Police, Cyberabad and obtained acknowledgement on 21.01.2012. The above stated facts form and constitute the cause of action. Hence, this suit.”

10. A perusal of the above para clearly demonstrates that the petitioner filed the suit basing on the sale deed dated 10.01.2012. Whether the petitioner has dispossessed the respondent from the

suit schedule property or not requires an elaborate trial. A perusal of the above para *prima facie* reveals that there is a cause of action to file the suit. Taking into consideration the cause of action portion of the plaint, I am unable to accede to the contention of the learned counsel for the petitioner that the respondent filed the suit without any cause of action. There is no illegality, irregularity or impropriety in the order of the trial Court warranting interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India.

11. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that it is a fit case to dismiss the revision.

12. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

Date: 05.07.2018
Ivd

T.SUNIL CHOWDARY, J