

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.888 OF 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 31.01.2017 passed in I.A.No.666 of 2016 in O.S.No.91 of 2016 on the file of the Court of the Principal Senior Civil Judge at Mancherial.

2. Heard the learned counsel for both parties.

3. The point that arises for consideration is:

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

4. A perusal of the record reveals that respondent Nos.1 and 2 filed O.S.No.91 of 2016 on the file of the Court of the Principal Senior Civil Judge at Mancherial against the petitioners and other respondents for declaration and consequential perpetual injunction in respect of the **suit** schedule property. During pendency of the suit, the petitioners, who are defendant Nos.1 and 2, and respondent Nos.3 and 4 filed I.A.No.666 of 2016, under Order VII Rule 11(a) and (d) read with Section 151 C.P.C., to reject the plaint. Respondent Nos.1 and 2 filed counter *inter alia* contending that the petition is not maintainable either on facts or in law; therefore, the petition is liable to be dismissed. The trial Court, after considering the material available on record, arrived at a conclusion that it is not a fit case to reject the plaint. Hence, the revision.

5. If the plaint does not disclose the cause of action, the plaint is liable to be rejected in view of Order VII Rule 11(a) C.P.C. If the suit is barred by any other law for the time being in force, certainly the plaint is liable to be rejected in view of Order VII Rule 11(d) C.P.C. It is a settled principle of law that while deciding the applications filed under Order VII Rule 11 C.P.C., the Court has to take into consideration the averments made in the plaint. If the averments made in the plaint *per se* do not disclose the cause of action or barred by any other law, then the plaint is liable to be rejected under Order VII Rule 11(a) or (d) of CPC respectively. This Court carefully perused the plaint copy. In Para No.9 of the plaint, respondent Nos.1 and 2 mentioned the cause of action. A perusal of the plaint *prima facie* reveals the cause of action for filing of the suit.

6. Learned counsel for the petitioners strenuously submitted that respondent Nos.1 and 2 are not in possession of the suit schedule property and moreover, they have not seek the relief of recovery of possession; therefore, the suit is not maintainable.

7. As rightly pointed out by the learned counsel for the petitioners, in a suit for declaration, the plaintiff has to seek appropriate consequential relief. In the present case, the petitioners filed the suit for declaration and consequential perpetual injunction. While deciding the petitions filed under Order VII Rule 11 CPC, the Court cannot decide whether consequential relief of perpetual injunction is the appropriate relief or not. That aspect has to be gone into at the time of full-fledged trial only. This Court cannot give any finding with regard to who is in

possession of the suit schedule property as on the date of filing of the suit in view of pendency of the suit. The suit as filed by respondent Nos.1 and 2 is not barred by any other law for the time being in force. The petitioners failed to satisfy the basic ingredients of Order VII Rule 11(a) and (d) C.P.C. The trial Court considered the material available on record with reference to the scope of Order VII Rule 11(a) and (d) C.P.C. and dismissed the petition. The trial Court has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing with the findings recorded by the trial Court. There is no illegality, irregularity or impropriety in the impugned order warranting interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India.

8. In the result, the Civil Revision Petition is dismissed. However, the observations, if any, made by this Court are confined to this revision petition only. The trial Court is directed to dispose of the suit as expeditiously as possible. There shall be no order as to costs.

9. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 21.12.2018

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