

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.4644 OF 2018

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner – defendant, aggrieved by the order, dated 19.04.2018, dismissing I.A. No.1412 of 2016 in O.S. No.169 of 2014 by the learned District Judge, Ananthapuram (for short, 'the trial Court').

Heard the learned counsel for the petitioner and perused the order under challenge including the material on record.

The case of the petitioner, in brief, is that the respondent – plaintiff filed the suit for recovery of debt amount, based on the mortgage deed executed on 25.04.2014, by selling the suit schedule property. During pendency of the suit, the defendant filed I.A. No.1412 of 2016, under Order VII Rule 11 of the C.P.C., seeking rejection of the plaint on the sole ground that the subject land alleged to have been mortgaged to the plaintiff is an assigned land and there is prohibition on the land under the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short, 'the Act 9 of 1977').

The trial Court, after hearing the arguments of both sides and perusing the material on record, dismissed the Application. Aggrieved thereby, the petitioner – defendant invoked the jurisdiction of this Court by way of this Revision.

A perusal of the impugned order shows that, though the defendant claimed that the suit schedule property is an assigned land, no documents were filed in support of his claim. Moreover, the documents, which were obtained by him under the Right to Information Act, 2005 in I.A. No.1734 of 2017, were also not useful to his claim. But the plaintiff produced the alleged mortgage deed, which shows that the schedule property was gifted to the defendant and it is not an assigned land. Further, the trial Court, observing that whether there is absolute bar on alienation of assigned land is a question that requires

examination of the nature of assignment but there is no material on record as to the nature of assignment, and as the nature of assignment has to be determined in the course of trial, after considering the entire evidence, the suit cannot be rejected at that stage, rightly dismissed the Application.

Admittedly, whether a particular land is assigned land or not, whether there is prohibition on the land executed in favour of an individual or not and whether the Act 9 of 1977 is applicable or not, are the questions which entirely depend on the facts of that case. The trial Court, merely taking into consideration the plea of the defendant that the land is assigned land and there is prohibition to deal with such land, cannot reject the plaint, without there being any evidence adduced on behalf of the respective parties. It may also be noted that the suit is of the year 2014 and the Application came to be filed after two years of filing of the suit *i.e.*, on 30.08.2016. In those circumstances, the trial Court, rightly taking into consideration the fact that the no material in support of the plea of the defendant was placed, dismissed the Application. Hence, the impugned order does not call for any interference of this Court.

Accordingly, the Civil Revision Petition is dismissed. No costs.

As a sequel, the miscellaneous applications, if any pending, shall stand dismissed.

CHALLA KODANDA RAM, J

Date: 17.08.2018.
Dsh

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

100



21082018

CIVIL REVISION PETITION No. 4644 OF 2018

Date. 17.08.2018

DSH