

HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.5589 OF 2018

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed by the plaintiff in the unregistered suit (C.F.R.no.3201 of 2018), on the file of the Senior Civil Court, Markapur, assailing the order, dated 30.08.2018, whereby the plaint was returned directing the plaintiff to deposit the balance of sale consideration as a condition precedent for registering & entertaining the suit for specific performance of the suit contract of sale.

2. I have heard the submissions of Sri *I.Koti Reddy*, learned counsel appearing for the plaintiff in the un-numbered original suit.

3. Learned counsel for the petitioner submits as follows: 'The suit is filed for specific performance of contract of sale, dated 18.08.2017, executed by the defendant in favour of the plaintiff in respect of Ac.0.15 cents of vacant site in Sy.no.307/2A in Rajupalem village of Triupranthakam Mandal of Prakasam District, more fully described in the schedule annexed to the plaint. The possession of the subject property is not delivered under the said contract of sale. After exchange of notices, the suit was filed for specific performance of the suit contract of sale by making necessary averments in the plaint. It is specifically averred in the plaint that the plaintiff is always ready and willing to perform his part of the contract. At the stage of scrutiny of the plaint, the trial Court while returning the plaint with office objections, directed the plaintiff to deposit the balance of sale consideration payable under the suit contract of sale. The plaint was re-presented stating that there is no requirement of depositing the balance sale consideration and that the balance of sale consideration

is made ready by the plaintiff and it is available in his bank account. However, the plaint was once again returned by an order, dated 30.08.2018, which reads thus: 'Balance of sale consideration amount shall be deposited into Court'. Aggrieved thereof, the present revision is filed. The possession of the property covered by the contract of sale is not delivered to the plaintiff. If the plaintiff is directed to deposit the balance of sale consideration of Rs.10,40,000/-, the said amount would be lying idle in the Court deposit and the plaintiff would be deprived of the enjoyment of the money/sale consideration as well. The money in Court deposit will not fetch any interest. Even if it is invested in a Bank deposit, it will fetch a meagre interest and not the market rate of interest. The trial Court, at the stage of scrutiny of the plaint and even before the suit was registered, erroneously directed the plaintiff to deposit the balance of sale consideration. Neither there is any such requirement under law nor is the trial Court having jurisdiction to issue such a direction for deposit of balance of sale consideration even at the inception i.e., at the stage of registering and entertaining the suit. The order impugned of the Court below being one without jurisdiction is liable to be set aside. Hence, the said order may be set aside and the trial Court may be directed to register and entertain the suit after the plaintiff complying with other formalities and other objections other than the subject objection.'

4. Learned counsel for the plaintiff placed reliance on the decision rendered by a Division Bench of this Court in **Sakamuri Sivaram Babu and another v. Parasa Sunjan Raju**¹, wherein the Division Bench, having referred to an earlier order, dated 20.03.1991, of a

¹ 1992 (1) APLJ 154

learned Single Judge of this Court passed in CRP.no.902 of 1991, held that the trial Court has no jurisdiction to issue a direction for deposit of balance of sale consideration even at the stage of inception, i.e., at the stage of registering and entertaining the suit.

5. I have perused the plaint and given earnest consideration to the submissions.

6. What all is required under Section 16 (c) of the Specific Relief Act, 1963, is that the plaintiff is required to aver in the plaint that the plaintiff either has performed or has always been ready & willing to perform the essential terms of the contract, which are to be performed by the plaintiff. Admittedly, the plaintiff herein made the necessary averments in the plaint. Learned counsel submits that the plaintiff is in a position to show that his conduct has been without blemish throughout in the context of readiness and willingness to perform his part of the contract.

7. Having regard to the facts, submissions and the settled legal position, this Court finds that the order of the Court below directing the plaintiff to deposit the balance of sale consideration even at the stage of inception, i.e., at the stage of registering and entertaining the suit is unsustainable and is liable to be set aside.

8. Accordingly, the Civil Revision Petition is allowed at the stage of admission and the said afore-stated direction of the trial Court is set aside and the trial Court is directed to register the plaint, if it is otherwise in order and on the plaintiff fulfilling the other formalities, except the subject direction/formality with regard to deposit of balance of sale consideration.

There shall be no order as to costs.

Miscellaneous Petitions, if any pending, shall stand closed.

M.SEETHARAMA MURTI, J

Date: 1st October, 2018

Note: As a sequel to this order, the Registry is directed to return the original plaint filed with material papers to enable the plaintiff to re-present the same before the trial Court.

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