

HON'BLE SRI JUSTICE S.V.BHATT

Civil Revision Petition No. 794 of 2013

Order:

Heard Sri P. Sri Raghu Ram, learned Senior Counsel for petitioners and Sri. J.U.M.V. Prasad for respondents.

2. The Civil Revision Petition is at the instance of defendants in O.S. No.358 of 2011 in the Court of the Additional Senior Civil Judge, Kurnool. The revision is directed against the order in I.A. No. 90 of 2012 filed under Order 7 Rule 11 of C.P.C., for rejecting the plaint in O.S. No. 358 of 2011.

3. The respondent herein filed O.S. No. 358 of 2011 for the relief of perpetual injunction restraining the revision petitioners herein, their men, agents etc, from occupying 'B' Schedule plaint plan Road No. 1,2,3 and from making any constructions on 'B' Schedule plaint plan Road Nos. 1,2,3 which is adjacent to 'A' Schedule property in Survey No. 209/4 of Kurnool Revenue Village. The plaint 'A', 'B' Schedules read thus:

A-Schedule

All that the part and parcel of the shopping bearing No. 46/87-50 in 46th ward of Kurnool Municipal Corporation, Wood Land Complex, Budhawarpeta, situated in Survey No. 209/4 of Kurnool Revenue Village, approved by the Director, Town and Country Planning, Hyderabad, vide B.P. 39/87 within Sub-Registration District and Registration District of Kurnool, bounded by :

East	:	Shop No. 51
West	:	Shop No. 49
North	:	33' wide Road
South	:	Land in Sy. No. 209/4

Measurements :

Site and Construction : East to West 13' (3.9424 M) North to South
 18' 6" (5.6388 M) Extent 240.5 Sft. or 26.7 Sq. Yards.
 M.V. Rs. 6690/- per Sq. Yard.

B – Schedule

Plaint Plan in which Road No.1, Road No. 2 and Road No.3 is
 shown in Sy. No.209/4

4. The basis on which the revision petitioners seek rejection of plaint is that the averments in the plaint do not disclose the cause of action. According to revision petitioners, the premise on which the right of respondent is founded is that the property covered by Schedule 'B' is approved as lay-out by the competent authority in B.P. 39 of 1987 and the respondent pre-supposes that the roads ear-marked as road in the layout stood vested in the Local Body and there is necessity for administering and continuing to maintain these roads in the manner in which they have been approved by the competent authority. In this background, the case of revision petitioners is that the revision petitioners have become owners of all the plots covered by Survey No. 209/4, except the plots now claimed by the respondent herein. Being the absolute owners of the extent covered by Survey No. 209/4, the revision petitioners have applied for revision of the layout, B.P. 39 of 1987. It is the case of the revision petitioners that the roads though are shown in B.P. 39 of 1987, the roads are not transferred or did not stand vested in the Local Body. Therefore, when a revised application is made, the revision petitioners are well within their competence as rightful owners to change the mode and manner of user of the property purchased by them.

5. The respondent filed counter-affidavit placing reliance on the categorical statement made in paragraphs 5,9 and 10 to contend that

assuming that the stand taken in the affidavit is correct, that by itself, does not result in consideration or rejection of plaint on the ground that it does not disclose the cause of action. Respondent relies on the averments particularly, that the respondent claims the right of ingress/egress as purchaser of an open plot or his easementary right through the roads particularly shown in Schedule-B of the plaint schedule.

6. The trial Court considered the rival submissions through the order impugned in the C.R.P. and dismissed the application. Hence, the Civil Revision Petition.

7. Sri P. Sri Raghu Ram, learned Senior Counsel contends that the ground raised by the revision petitioners that the plaint does not disclose the cause of action is not properly appreciated by the trial Court, he prefaces his submission by arguing that a bare look at the plaint would disclose that the premise or foundation on which the plaintiff has come to the Court is non-existing. Unless and until one establishes a right existing in him, infringement of such a right and filing Suit for perpetual injunction for alleged infringement does not arise. He further submits that the revision petitioners have applied for revised layout. The competent authority on being satisfied with the mode and manner of change of orientation of layout, has already changed the layout and even for this reason, the plaint is liable to be rejected. To bring home that the plaint does not disclose cause of action, he read out plaint and pointed out specific allegation therein along with lack of cause of action.

8. On the other hand, Sri J.U.M.V. Prasad contends that the cause of action is appreciated from the averments made in the plaint. According to him, the sale deeds in favour of respondent are not in dispute. The respondent has purchased an open plot. The plot pre-supposes the

existence of a road in a lay-out. The respondent in abundant caution claims a right of ingress and egress through a document under which he has claimed right and title and also easementary right. According to him, the plaint refers to these allegations, and if this Court accepts the prayer of the revision petitioners and rejects the plaint, the respondent would suffer irreparable loss for the case of respondent is decided without trial or evidence. He places strong reliance on the findings recorded by the trial Court and concludes that the revision is liable to be dismissed.

9. This Court, by referring to the reasons recorded by the learned trial Judge would have considered the grounds canvassed by the revision petitioners. The following paragraphs in the order under revision are excerpted for appreciating the valid grounds which weighed for dismissing the application.

“Merits or demerits of the averments mentioned in the plaint and contents in the documents cannot be decided at this stage. They shall be decided only after full fledged trial in the suit. When plain reading of the plaint and scrutiny of the documents prima facie disclose cause of action as discussed in foregoing paras against the petitioners/defendants, it is too premature to say that there is no cause of action to the suit or it is incorrect or plaint contains only false averments intended to harass the defendant. Plaintiffs legal right of claiming permanent injunction on the ground of infringing his alleged right of easement in the property sold to them cannot be curtailed at the threshold. It is too harsh to hold that there is no cause of action for the suit when it prima facie manifests the same.

Though the learned counsel for the petitioners/defendants focussed much about the alleged scandalous pleas in plaint against the father of 2nd petitioner, this Court honestly feel that they are not germane for consideration at the stage of deciding whether plaint is liable to be rejected for non-disclosure of any cause of action.

Viewed in any angle, I do not find any merits in the application.

I answer the point accordingly.”

10. After carefully perusing the plaint, the affidavit in I.A. No. 90 of 2012 and the counter-affidavit filed by respondent, prima facie, this Court is of the view that the findings recorded by the learned trial Judge do not warrant interference. Even for the limited purpose of meeting the argument of Sri P. Sri Raghu Ram, this Court considers the nature of the right claimed by the respondent and the objection now canvassed by the revision petitioners, the finding ultimately recorded on such consideration would definitely prejudice the trial Court in O.S. No. 358 of 2011. This Court since is in full agreement with each of the findings recorded by the learned trial Judge, does not propose to restate these findings, except affirming the order under revision.

11. The Civil Revision Petition fails and is, accordingly, dismissed.

Consequently, pending miscellaneous applications shall also stand closed. No costs.

S.V.BHATT, J

Date: 28th November, 2018

Pnb