

HON'BLE SRI JUSTICE S.V. BHATT

C.R.P.No.6357 OF 2018

ORDER:

Heard Mr.N.Ashok Kumar for revision petitioner.

The revision is directed against the order dated 20.03.2018 in I.A.No.540 of 2017 in O.S.No.380 of 2016. The revision petitioner is the defendant in O.S.No.380 of 2016 on the file of the V Additional Junior Civil Judge, Warangal. The respondent herein filed the suit for permanent injunction restraining the revision petitioner herein, his successors, agents, workmen etc., from interfering with the alleged possession of plaint schedule property, which is described as 260 sq. yards in Sy.Nos.290, 291 and 295 of Deshaipet Revenue Village at Navayuga Colony, Deshaipet Road, Warangal City and District. The revision petitioner has filed written statement and is contesting the suit. The instant application is filed under Order VII Rule 11 CPC to reject the plaint. The revision petitioner alleges in the affidavit filed in I.A.No.540 of 2017 that the suit is filed by respondent to harass the revision petitioner. The revision petitioner is the owner of Plot in Sy.No.296 of Deshaipet Revenue Village. The property cannot and could not be identified with the details now given by respondent. Therefore, the revision petitioner prays for rejecting the plaint.

The respondent filed counter affidavit. The averments in the counter affidavit are made in furtherance to the stand already taken in the plaint.

The learned trial Judge, after considering the facts in issue between the parties and the averments in the affidavit in I.A.No.540 of 2017, held as follows :-

“It is considered that if there is any dispute in regard to the identity of the property the boundaries plays vital role in deciding the aspect whether the plaintiff is in possession of the schedule property as claimed by him. It is further held that since the burden lies upon the plaintiff, therefore, unless until or full-fledged trial is not conducted by affording an opportunity to the plaintiff to let in oral and documentary evidence on his behalf then, the actual facts will not come into the light.

It is held that whether the alleged registered Sale Agreement dated 23.07.2015 conveys any title or not is a question which cannot be considered in a petition filed under Order VII Rule 11 of C.P.C., and basing on this ground the plaint cannot be rejected apart from those the grounds mentioned in Clauses “a” to “f” of Order VII Rule 11 of C.P.C. Thus, the petitioner has failed to establish the grounds therefore, the petition is liable to be dismissed for devoid of merits. Moreover, it is held that unless the said suit comes up for trial the claim of the petitioner cannot be considered, therefore, in view of the facts and circumstances and in view of the contentions raised by the respondent being tenable it is held that the petition is devoid of merits and entitled to be dismissed without costs. Thus, point Nos.1 and 2 are answered against the petitioner/ defendant.”

Mr.N.Ashok Kumar contends that the plaint, if read as it is, is sufficient to convince the Court that the revision petitioner has been subjected to an avoidable trial and agony at the hands of respondent. According to him, no cause of action is made out and, therefore, the plaint is liable to be rejected.

I have perused the record and noted the submissions of Mr.N.Ashok Kumar.

Prima facie, this Court is of the view that the revision petitioner among other circumstances sets up independent title to a plot said to have been purchased by revision petitioner through Sale Deed dated 21.12.1995 and also disputes in all fours, the location, identity and boundaries shown in the plaint. Therefore, even assuming that a few details are given by respondent in the plaint, which are stoutly disputed by revision petitioner herein, the same results in a fact in issue for consideration in trial but not a ground for rejecting the plaint. This Court firstly is in agreement with the findings recorded by the learned trial Judge in the order under revision and secondly, for the reasons stated above, the revision fails and is accordingly dismissed.

Pending miscellaneous petitions, if any, stand closed.

Date: 02-11-2018
Prv

S.V.BHATT, J

