

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 6776 of 2018

ORDER:

1) Aggrieved by the order dated 25.10.2018 passed in CFR No.2850 of 2018 in un-registered O.S. on the file of the XI Additional District Judge, Tenali, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

2) The facts in issue are as under:

The petitioners/plaintiffs filed a suit for specific performance of the agreement of sale dated 03.11.2017 against the defendants 1 to 3 directing them to execute registered sale deed covering the suit schedule property by receiving the balance sale consideration of Rs.19,00,000/-.

3) Initially the office returned the suit on 12.10.2018 with an objection as to how the suit is maintainable, when D2 and D3 are not parties to the agreement and when they did not sign the document.

4) In reply, the learned counsel for the petitioners pleaded that as per clause 17 of the Agreement of the agreement of sale, the heirs of the vendors or vendors have no objection for the same and as such re-submitted the plaint.

5) After perusing the record, the learned XI Additional District Judge returned the plaint vide docket order dated 25.10.2018 stating that the suit was returned on the ground of maintainability due to mis-joinder of D-2 and D-3, when D-2 and D-3 are not parties to the agreement of sale and did not sign the document. Though the learned counsel for the petitioners earlier contended, as a reply to the initial objection that D-2 and D-3 have given consent and as per clause 17 of the Agreement, the heirs of the vendors or vendors have no objection for the same and it is deemed that the agreement is executed on behalf of all the defendants, the trial court returned the plaint on 25.10.2018 with the following endorsement:-

"Heard the counsel for the petitioner. Perused the record. Earlier the suit was returned on the ground that how the suit is maintainable, when D-2 and D-3 are not parties to the agreement and they did not sign the document. Though the learned counsel for the petitioner had contended that as per clause 17 of the Agreement, the heirs of the vendors or vendors would have no objection for the same. When they are not parties to the agreement nor there are any such plea that the defendants 1 and 2 also agreed to sell the property, whereas, as per the plaintiff, the 1st defendant on behalf of defendants 2 and 3 executed the document to the knowledge of the other defendants and nowhere it is pleaded that the defendants 1 and 2 are also agreed to sell the property, nor there was agreement between the plaintiff and D2 and D3, as such, the suit is returned for compliance for earlier objection."

6) Challenging the same the plaintiffs preferred the present revision.

7) Learned counsel for the petitioners would submit that clause 17 of the suit document i.e., agreement would show that the heirs of the vendors or vendors have no objection for the sale and the suit document is executed with the knowledge and consent of defendants 2 and 3 and that there is a oral agreement between defendants 2 and 3 with the plaintiffs, as such, the suit is maintainable.

8) But the issue as to whether D-2 and D-3 have given consent and also about the existence of oral agreement between D-2 and D-3 on one side and the plaintiff on the other side would be known only if they are on record. Therefore, truth of the pleading can be established after hearing all concerned. No prejudice would be caused to the petitioners if D-2 and D-3 are there on record.

9) Since the impugned order was passed, even before process was issued to the defendants in the suit, it may not be necessary to put them on notice in this revision.

10) Accordingly, the C.R.P. is allowed and the order dated 25.10.2018 passed in CFR No.2850 of 2018 in un-registered O.S. on the file of the XI Additional District Judge, Tenali, is set-aside and the trial court is directed to number the suit and proceed in accordance with law. The Registry shall return the original plaint copy in accordance with the procedure.

JUSTICE C. PRAVEEN KUMAR

Dt: 11.12.2018

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