

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.85 of 2019

ORDER:

This Revision is filed under Article 227 of the Constitution of India assailing the order dt.24-10-2018 in I.A.No.864 of 2015 in O.S.No.1463 of 2014 of the V Additional District and Sessions Judge, Ranga Reddy District at L.B. Nagar, Hyderabad.

2. Respondent Nos.1 and 2/plaintiffs filed the said suit against petitioner and 3rd respondent for specific performance of an agreement of sale dt.14-06-2003 allegedly executed in their favour acting under a G.P.A. given by the petitioner.

3. Petitioner filed I.A.No.864 of 2015 under Order VII Rule 11(a) C.P.C. to reject the plaint on the ground that it did not disclose any cause of action.

4. In the said application it is the contention of the petitioner that petitioner is the owner of the plaint schedule property, but he did not execute any G.P.A. in favour of 3rd respondent/2nd defendant and he was not at all aware of the execution of the agreement of sale by the 3rd respondent in favour of the petitioner. He contended that the suit is filed on account of collusion among the respondents and to blackmail the petitioner and extract illegal gratification.

5. Counter-affidavit was filed by respondent Nos.1 and 2 opposing the said application. The allegations leveled by petitioner were denied and it was contended that it was not the respondent Nos.1 and 2's allegation that 3rd respondent executed the suit agreement of sale as G.P.A. Holder of the petitioner. Alternatively it was contended that there was in existence such a G.P.A. in favour of 3rd respondent and the petitioner is aware of the execution of the said agreement of sale. It was also contended that respondent Nos.1 and 3 are brothers.

6. By order dt.24-10-2018, the Court below dismissed the said I.A. It held that a reading of the plaint discloses cause of action against petitioner and the plaint cannot be rejected merely because in the opinion of the judge, the plaintiff may not succeed in the suit. It observed that the question whether the 3rd respondent/2nd defendant was G.P.A. holder for the petitioner as on the date of execution of agreement of sale is required to be determined during the course of trial with reference to the contentions raised by petitioner in the written statement, and since the plaint does disclose the cause of action to file the suit, it cannot be rejected.

7. Assailing the same, this Revision is filed.

8. Learned counsel for petitioner sought to contend that the Court below erred in rejecting the application for rejection of plaint and that the Court below failed to see that the G.P.A. allegedly executed by petitioner in favour of 3rd respondent had not been filed along with the plaint. He contended that grave prejudice would be caused to the

petitioner if the suit is allowed to be proceeded ignoring the absence of G.P.A.

9. A reading of the plaint shows that in para-III (1), it was stated by respondent Nos.1 and 2 that 3rd respondent, on behalf of petitioner, had represented to respondent Nos.1 and 2 that he is the G.P.A. holder of the petitioner, and entered into an agreement of sale and also received consideration. Even in para-III (10) of the plaint dealing with “cause of action”, it is stated that cause of action arose on 14-06-2003 when the defendants and plaintiffs entered into agreement of sale in respect of the suit schedule property. Thus, a reading of the plaint discloses a cause of action.

10. As rightly held by the Court below, a plaint cannot be rejected on the opinion of the Judge hearing a suit that plaintiff may not succeed in the suit. So long as the plaint discloses a cause of action, the suit has to proceed for trial.

11. Therefore, I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

12. Accordingly, the Civil Revision Petition is dismissed at the stage of admission.

13. Since the suit is of the year 2014, the Court below shall expedite disposal of the suit and dispose it of preferably on or before 31-12-2019. No costs.

14. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 13-02-2019

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