

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.224 of 2019

ORDER:

Heard the learned counsel for the petitioners.

2. This Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.02-01-2019 in I.A.No.228 of 2018 in O.S.No.5 of 2013 of the Junior Civil Judge at Kodangal.

3. Petitioners herein are defendants in the suit.

4. The 1st respondent/plaintiff filed the suit against the petitioners for perpetual injunction restraining the petitioners from interfering with his alleged peaceful possession and enjoyment of the suit schedule property.

5. In the plaint, plaintiffs/respondent Nos.1 to 3 contended that they are the owners of the plaint schedule properties, that their names are mutated in the revenue records after the death of their father and the suit schedule properties are ancestral properties; but the defendants, who have no concern with the property and who are holders of adjacent land, attempted to grab the land of the petitioners on 05-01-2013 and therefore, they seek perpetual injunction.

6. Written Statement was filed by the petitioners denying the suit contentions pointing out that there was a prior litigation in O.S.No.83 of 1950 filed by the father of the 1st petitioner on the file of the

District Munsif, Kodangal for perpetual injunction against the father of the respondents/plaintiffs and that there was a decree passed therein in favour of the plaintiffs which attained finality; father of the respondents filed O.S.No.18 of 1972 to set aside the decree dt.11-01-1951 in O.S.No.83 of 1950 but it was dismissed on 06-08-1974 by the District Munsif, Kodangal; that the respondents were never in possession of the plaint schedule property and the petitioners alone were in possession thereof. They also contended that the respondents succeeded in getting their names entered in the records of rights as pattadars and possessors of the suit land without knowledge of the petitioners and then started claiming that they are owners and possessors of the suit schedule land.

7. Petitioners then filed I.A.No.228 of 2018 under Order 7 Rule 11 CPC to reject the plaint. In the said application, they reiterated the Written Statement contentions and took the plea that the plaint is liable to be rejected because of the decision in O.S.No.83 of 1950 and O.S.No.18 of 1972 and the respondents are not in possession of the suit schedule property.

8. This application was opposed by the respondents who contended that contentions raised by the petitioners did not fall within Order 7 Rule 7 CPC and that it is the respondents who are in exclusive possession of the suit schedule property by asserting their own title as per mutation proceedings correctly recorded, that question of *res judicata* would not arise, and the plaint cannot be rejected.

9. By order dt.02-01-2019, the Court below dismissed the said I.A. After referring to the contentions of both sides, the Court below observed that while exercising power under Order 7 Rule 11 CPC in order to hold whether the plaint is liable to be rejected or not, it shall only look into the plaint averments and nothing else and the plea of *res judicata* as provided in Section 11 CPC cannot be ground to reject a plaint. It also relied on decisions of this Court in **N.Sagar Vs. M.Rajeswara Rao¹** and **Emundla Lingaiah Vs. Kokkula @ Burra Narsavva and others²**.

10. Regarding the aspect of possession, the Court below observed that on the basis of averments in the affidavit filed in support of I.A.No.228 of 2018, no conclusion as to title or possession of the suit schedule property can be drawn and the burden is on the respondents to prove the same.

11. Assailing the same, this Revision Petition is filed.

12. Though the learned counsel for the petitioners sought to contend that the Court below committed grave error in refusing to reject the plaint on the ground of *res judicata*, since the consideration of the said issue would require consideration of the pleadings and the findings in the earlier litigation vis-à-vis pleadings in the present case, there cannot be rejection of plaint without trial on the said ground.

¹ 2018 (4) ALT 258

² 2015 (4) ALT 123

13. As rightly held by the Court below, plaint cannot be rejected on the plea of *res judicata* and issue of possession or title to the property has to be gone into after trial and decided by the Court.

14. 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.

15. Accordingly, the Civil Revision Petition is dismissed.
No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-02-2019
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