

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

CRP.No.1140 OF 2019

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the Docket Order dt.14.03.2019 passed in OS.SR.No.4383 of 2018 of Senior Civil Judge at Vikarabad.

2. Petitioners had instituted a suit against the respondents before the Senior Civil Judge at Vikarabad, which was given OSSR.No.4383 of 2018, for declaration that a registered Sale Deed dt.19.06.1989 bearing Document No.1212 of 1989 is a benami transaction and also nominal in nature and that consequently the plaint schedule property be partitioned among the petitioners 1 to 3 along with respondents 1 & 4; to declare a registered sale deed dt.28.09.2016 bearing Document No.7719 of 2016 as null and void and not binding on the petitioners; and to direct Sub-Registrar, Chevella to cancel the same.

3. The Court below rejected the same invoking Order VII Rule 11(d) CPC by passing the following order:

“Heard. Perused the record.

As per the contents of the plaint and documents filed by the plaintiff counsel the document no.1 reveals that the suit property was purchased by Defendant No.1 on 19-06-1989 under Registered sale deed. This suit is filed after 29 years claiming that the said execution of Registered Sale Deed is a Benami transaction. No document is filed showing that the suit property was in common use of the family or in the custody of Late Penta Reddy till his demise in the month of March, 1996.

After 29 years of execution of Registered sale deed in favour of Defendant No.1 and after 13 years of death of Late Penta Reddy this suit is filed claiming that the Registered sale deed dated: 19-06-1989 is a Benami transaction which is barred by limitation.”

4. Assailing the same this CRP is filed.

5. Admittedly, rejection of the plaint in the suit OSSR.No.4383 of 2018 by the Court below on 14.03.2018 pursuant to the above order is to be deemed as a ‘decree’ and an appeal under Section 96 of the CPC would lie challenging the said rejection of the plaint.

6. When such an effective alternative remedy is available to the petitioners, I am not inclined to exercise the jurisdiction under Article 227 of the Constitution of India and entertain this Revision.

7. Accordingly, this Civil Revision Petition is dismissed granting liberty to the petitioners to avail the remedy of appeal under Section 96 of CPC challenging the order dt.14.03.2019 in OS.SR.No.4383 of 2018 rejecting the plaint under Order VII Rule 11(d) CPC. It is made clear that this Court has not expressed any opinion on the correctness or otherwise of the impugned order. Registry is directed to return to the counsel for the petitioner the certified copy of the impugned order immediately to enable the petitioner to avail the said remedy. No order as to costs.

8. Consequently, miscellaneous petitions pending if any shall stand dismissed.

M.S. RAMACHANDRA RAO, J

30th August, 2019.
gra

