

THE HON'BLE Dr.JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.1207 OF 2019

ORDER:

This revision under Article 227 of the Constitution of India, is filed by the petitioners/plaintiffs, aggrieved by the order dated 20.02.2019 passed in I.A.No.1177 of 2018 in O.S.No.606 of 2011 by the learned I Additional District Judge, Ranga Reddy District at L.B.Nagar, wherein the application filed by the petitioners/plaintiffs under Order VI Rule 17 read with Section 151 of CPC for amendment of plaint, was dismissed.

2) Heard the learned counsel for both sides and perused the record.

3) Learned counsel for the revision petitioners/plaintiffs would submit that the plaintiff filed the subject suit for specific performance of contract and permanent injunction against the respondent/defendant. There is genuine agreement of sale as well as other documents in support of the revision petitioners/plaintiffs. During the pendency of the subject suit, the respondent/defendant had entered into Memorandum of Understanding (MOU) dated 28.09.2011 with the revision petitioners/plaintiffs and consequently issued certain cheques to pay the money received by him. Thereafter, the revision petitioners/plaintiffs delivered possession of the suit schedule property to the respondent/defendant. Since there are subsequent developments in between the parties, the amendment as detailed in the subject I.A, was sought for. The Court below erroneously dismissed the subject I.A vide impugned

order dated 20.02.2019. The amendment sought for is very much essential and without the amendment being carried out, the proceedings in the subject suit are vitiated. It is also contended that due to lapse of time, the revision petitioners/plaintiffs could not file a comprehensive suit seeking all the reliefs and ultimately prayed to set aside the impugned order and allow the subject I.A as prayed for.

4) On the other hand, learned counsel for the respondent/defendant would contend that the subject I.A is filed only to drag on the proceedings in the subject suit. In fact, no MOU was entered in between the parties, as contended by the revision petitioners/plaintiffs. Earlier, the revision petitioners filed I.A.No.1262 of 2014 seeking certain amendments and the same was dismissed by the Court below. The respondent/defendant denies the execution of the subject agreement of sale and also delivery of the suit schedule property as contended by the revision petitioners and ultimately prayed to dismiss the revision petition.

5) In view of the submissions made by both sides, the point that arises for determination is:

1) Whether the impugned order dated 20.02.2019 passed in I.A.No.1177 of 2018 in O.S.No.606 of 2011 by the learned I Additional District Judge, Ranga Reddy District at L.B.Nagar, is liable to be set aside? And

2) Whether the petitioners/plaintiffs are entitled for relief as prayed for in I.A.No.1177 of 2018?

6) POINTS: The material placed on record reveals that the revision petitioners/plaintiffs filed the subject suit for specific performance against the respondent/defendant relying on the agreement of sale dated 07.06.2004 and also perpetual injunction. During the pendency of the suit, the revision petitioners filed I.A.No.1262 of 2014 under Order VI Rule 17 CPC seeking certain amendments and the said I.A was dismissed by the Court below vide order dated 07.04.2017. Aggrieved by the said order, the petitioners filed C.R.P.No.3050 of 2017 before this Court, wherein the said C.R.P was dismissed as withdrawn on 22.11.2018, granting liberty to the petitioners to file fresh petition before the Court below. It is relevant to state that the specific contention of the revision petitioners is that pursuant to the memorandum of understanding dated 28.09.2011, certain cheques were given by the respondent/defendant to the revision petitioners/plaintiffs in terms of understanding between them and possession of the suit schedule property was delivered to the respondent/defendant. Since the cheque issued by the respondent/defendant was dishnoured, the revision petitioners issued legal notice and filed C.C.No.275 of 2012 against the respondent/defendant. It is also contended that the respondent/defendant did not abide by the terms of MOU dated 28.09.2011 and that led to the filing of the amendment application.

7) As seen from the material placed on record, the MOU was brought into existence on 28.09.2011 and the first application to amend the plaint was made in the year 2014. Admittedly, the revision petitioners did not pursue the remedy expeditiously.

However, the contentions raised by the revision petitioners with regard to handing over possession and bringing the MOU into existence and other circumstances that led to the filing of the amendment application are relevant for determination of subject matter of the suit.

8) In the given circumstances, the revision petitioners cannot be driven to file separate comprehensive suit. They have to agitate all their grievances in the pending suit i.e, O.S.No.606 of 2011 only. The genuineness of the agreement of sale dated 07.06.2004, memorandum of understanding dated 28.09.2011 and delivery of possession as contended by the revision petitioners are required to be adjudicated after due trial. No opinion is expressed with regard to the merits of the case of either party to the proceedings. The Court below could not have gone into the aspect of delay and laches on the part of revision petitioners in filing the subject I.A. In the circumstances of the case, the Court below is required to adjudicate the substantial issues raised by both sides. Therefore, the impugned order is unsustainable and is liable to be set aside.

9) Accordingly, this Civil Revision Petition is allowed and the impugned order dated 20.02.2019 passed in I.A.No.1177 of 2018 in O.S.No.606 of 2011 by the learned I Additional District Judge, Ranga Reddy District at L.B.Nagar, is set aside. Consequently, the I.A.No.1177 of 2018 is allowed as prayed for. No order as to costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

Date: 12.11.2019
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