

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.7782 of 2018

ORDER :

Heard the counsel for petitioners. None appears for respondents.

2. This Civil Revision Petition is filed assailing the order dt.05.12.2018 passed in I.A.No.323 of 2018 in O.S.No.1 of 2013 on the file of Senior Civil Judge, Jangaon.

3. The petitioners herein are defendants in the said suit.

4. The respondent nos.1 and 2 filed the above suit against petitioners for declaration of their title and for a perpetual injunction restraining petitioners from interfering with their possession and enjoyment of the subject land. They contend that 2nd respondent has purchased the suit schedule land from the 1st respondent under a registered sale deed dt.26.10.2007 and also delivered vacant possession of the property to 2nd respondent who was in possession and enjoyment of the plaint schedule property. They further contend that 1st petitioner, who is the younger brother of 1st respondent, without having right, title or interest over the property, sold the plaint schedule property to 2nd petitioner; and that the said sale is not binding on respondent nos.1 and 2.

5. The petitioners filed application I.A.No.323 of 2018 to reject the plaint, stating that there is no cause of action to file the suit; that

respondent nos.1 and 2 have filed suit with unclean hands and imaginary facts; and the cause of action averred in the plaint is created and invented only for the purpose of the suit.

6. Counter-affidavit was filed by 2nd respondent stating that I.A.No.323 of 2018 is filed for rejection of the plaint five (05) years after filing of the suit; and in the written statement filed by 2nd petitioner, no plea was taken that there is no cause of action. He also denied the allegation made by petitioners that petitioners had alienated the plaint schedule property to third-parties on 18.10.2012 and 04.12.2012 vide Document bearing Nos.8235/2-12 and 9294/2012. He pointed out that the properties which are subject matter of those documents are entirely different and not relating to the plaint schedule property.

7. By order dt.05.12.2018, the Court below rejected I.A.No.323 of 2018.

8. The Court below referred to the contentions of respondent nos.1 and 2 that the property which is subject matter of the sale deeds 18.10.2012 and 04.12.2012 is not the same as the plaint schedule property, and held that this point is required to be determined at the time of trial; that the plaint discloses a cause of action as on 09.01.2013; and therefore, while directing the parties to proceed with the trial, it dismissed the said I.A.

9. Assailing the same, the present Civil Revision Petition is filed.

10. The counsel for petitioner contended that respondent nos.1 and 2 had already alienated the plaint schedule property to third-parties on 18.10.2012 and 04.12.2012 vide Document bearing Nos.8235/2-12 and 9294/2012, and so the suit is not maintainable at all.

11. Under Order VII Rule 11 of Civil Procedure Code, to decide whether or not there is cause of action to file the suit, the contents of the plaint have to be looked into.

12. In the instant case, para no.8 of the plaint refers as under :

“Cause of Action : The cause of action for the suit arose at Jangaon Town of Jangaon Revenue Mandal, Warangal District on 26.10.2007 when the plaintiff no.2 has purchased the suit schedule land from the plaintiff no.1 through a registered Agreement of sale cum G.P.A. on 08.03.2010 when the defendant no.1 has executed a registered sale deed in favour of the defendant no.2 and on 09.01.2013 when the defendants tried to interfere into the possession of plaintiffs over the suit schedule property under the guise of fraudulent and fabricated document.”

13. Whether the contentions raised in the plaint are true or not would undoubtedly be decided in the trial, and the same cannot be decided piecemeal on the basis of material produced by the defendants / petitioners other than at the trial.

14. Since any way the suit is of the year 2013 and more than five (05) years have elapsed and it is coming up for cross-examination of PW.1, I am of the view that the Court below did not commit any error of jurisdiction in dismissing I.A.No.323 of 2018 while directing the parties to proceed with the trial.

15. Accordingly the Civil Revision Petition is dismissed at the stage of admission. No order as to costs.

16. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 23.01.2019

Ndr/*