

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.173 of 2020

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.26-11-2019 in I.A.No.256 of 2019 in O.S.No.1197 of 2017 of the III Junior Civil Judge, City Civil Court, Hyderabad refusing to reject the plaint presented by the respondents under Order VII Rule 11(d) C.P.C.

2. The respondents herein had filed the said suit against the petitioners for a perpetual injunction restraining the petitioners from interfering with their possession and enjoyment of the suit schedule properties.

3. Written statement was filed by petitioners opposing the suit claim, and contending that pattas were issued by the then District Collector, Hyderabad to slum dwellers, and also denying possession of the respondents over the suit schedule properties.

4. Thereafter petitioners filed I.A.No.256 of 2019 to reject the plaint on the ground that the suit is barred under Section 37-A of Slum Areas (Improvement and Clearance) Act, 1956. According to them, the suit schedule properties were notified long back as slum area under the provisions of the said Act and there was a notification also issued on 30-01-1992 followed by Gazette notification in 1993.

5. This is opposed by respondents contending that the suit schedule properties are different from the property which was described in the Gazette. They also contended that there was no final notification under Section 3(2) of the A.P. Slum and Improvement (Acquisition) Act, 1956.

6. By order dt.26-11-2019, the Court below dismissed the said application stating that the Slum Areas (Improvement and Clearance) Act, 1956 applies only with regard to the Union Territories and not to the subject property which is located in Hyderabad and not a Union Territory.

7. Assailing the same, this Revision is filed.

8. It is contended by the learned Government Pleader for Appeals appearing for petitioners that petitioners have also filed Exs.P-1 and P-2 attested copy of the Gazette along with covering letter dt.14-10-2019 under Section 3(1) of the A.P. Slum Development (Acquisition of Land) Act, 1956 dt.30-01-1992 and another attested copy of the same Gazette, and the Court below should have considered these documents and decided the I.A.

9. Admittedly, the application filed by the petitioners is for rejection of the plaint invoking Order VII Rule 11(d) C.P.C. To decide the said application, the defence of the defendant or evidence which is sought to be adduced by the defendants, cannot be looked into. Only the

averments of the plaint and documents filed along with the plaint can be looked into. (**Kamala and others Vs. K.T. Eshwar Sa and others**¹).

10. In the instant case, the petitioners had not even pleaded in the written statement about the bar of the suit and in the application under Order VII Rule 11(d) C.P.C. filed by them they have mentioned only the Slum Areas (Improvement and Clearance) Act, 1956 which applies only to Union Territories and not to places like Hyderabad. So, the Court below had rightly held it to be inapplicable to the subject property.

11. In these circumstances, the Court below cannot be said to have committed any error of jurisdiction in refusing to take into account the documents filed by petitioners and dismissing I.A.No.256 of 2019.

12. The Civil Revision Petition fails and it is accordingly dismissed at the admission stage. No costs.

13. Consequently, miscellaneous petitions pending, if any, shall stand closed.

M.S.RAMACHANDRA RAO, J

Date: 30-01-2020

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¹ (2008) 12 SCC 661