

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.977 of 2019

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner/defendant, challenging the order, dated 07.03.2019, passed in I.A.No.1862 of 2018 in O.S.No.769 of 2011 by the IX Additional Chief Judge, City Civil Court, Hyderabad, whereby, the petition filed by the petitioner/defendant under Order VII Rule 11 of CPC seeking to reject the plaint submitted by the respondents/plaintiffs, was dismissed.

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

3. The learned counsel for the revision petitioner/defendant would submit that the revision petitioner/defendant had filed a suit in O.S.No.3495 of 2003 on the file of the IX Junior Civil Judge, City Civil Court, Hyderabad, against the respondents/plaintiffs for eviction, arrears of rent and mesne profits. The said suit was dismissed on merits. Aggrieved by the same, the revision petitioner/defendant filed A.S.No.246 of 2009 before the Chief Judge, City Civil Court, Hyderabad, and the said appeal was allowed by setting aside the judgment of the IX Junior Civil Judge City Civil Court, Hyderabad. Pursuant to the same, the revision petitioners/defendants filed

E.P.No.44 of 2011 based on the decree of the Chief Judge, City Civil Court, Hyderabad, in A.S.No.246 of 2009 and they were put in possession of the suit schedule property, pursuant to the execution of the Warrant issued in E.P.No.44 of 2011, on 05.05.2011. The subject suit in O.S.No.769 of 2011 filed by the respondents/plaintiffs under Section 6 of the Specific Relief Act, 1963 on the file of the Chief Judge, City Civil Court, Hyderabad, is barred in terms of mandate given under Order VII Rule 11D of CPC. The Court below erred in dismissing the subject interlocutory application filed for rejection of the plaint and ultimately prayed to set aside the order under challenge and allow the Civil Revision Petition as prayed for.

4. On the other hand, the learned counsel for the respondents/plaintiffs would contend that the respondents/plaintiffs sought possession of the suit schedule property in terms of decree passed in O.S.No.1097 of 2007 by the V Senior Civil Judge, City Civil Court, Hyderabad, which was executed in E.P.No.34 of 2008. Pursuant to the execution of the decree in E.P.No.34 of 2008, the respondents/plaintiffs were delivered vacant possession of the suit schedule property. The material questions raised in the plaint of the subject suit are required to be determined after due trial of the suit and ultimately prayed to dismiss the Civil Revision Petition. In support of his contentions, the learned counsel for the respondents/plaintiffs had relied

on a decision of the erstwhile common High Court for the States of Telangana and Andhra Pradesh in Katta Penchalaswamy and others Vs. Mopuru Veera Raghava Reddy¹.

5. In view of the above submissions, the point that arises for determination in this Civil Revision Petition is as follows:

“Whether the order, dated 07.03.2019, passed in I.A.No.1862 of 2018 in O.S.No.769 of 2011 by the IX Additional Chief Judge, City Civil Court, Hyderabad, is liable to be set aside?”

6. In Katta Penchalaswamy’s case supra, the erstwhile common High Court for the States of Telangana and Andhra Pradesh held that a suit under Section 6 of the Specific Relief Act, 1963, is maintainable, if the plaintiff is dispossessed from the suit property illegally, after he was put in possession of the same through process of Court. In the instant case, the revision petitioner/defendant is claiming possession over the suit schedule property by virtue of the order, dated 05.05.2011, passed in E.P.No.44 of 2011 in O.S.No.3495 of 2003 and the respondents/plaintiffs claimed to have taken physical possession of the suit schedule property by virtue of order, dated 19.06.2018, passed in E.P.No.34 of 2008 in O.S.No.1097 of 2007. Certain factual disputes are raised with regard to the limitation, delivery of possession etc.

¹ 2015 (1) ALT 667

The issue with regard to the possession and dispossession of the parties from the suit schedule properties etc., are required to be determined after due trial of the suit. The Court below assigned number of reasons in dismissing the subject interlocutory application in I.A.No.1862 of 2018. There is no legal infirmity in the order under challenge. The Civil Revision Petition is devoid of merit and is liable to be dismissed.

7. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

28th January, 2020
Bvv

Dr. SHAMEEM AKTHER, J