

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Civil Revision Petition No.6872 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner/defendant No.2, challenging the order, dated 16.11.2017, passed in I.A.No.1676 of 2017 in O.S.No.5 of 2007, by the Principal District Judge, Warangal, whereby, the interlocutory application filed by the petitioner/defendant No.2 under Order VII Rule 11 read with Section 151 of CPC, seeking to reject the plaint, was dismissed.

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

3. The learned counsel for the revision petitioner/defendant No.2 would contend that the respondent No.1/plaintiff filed the subject suit seeking partition and separate possession of the suit schedule properties, wherein he pleaded about registered partition deed and also subsequent exchange deed between him and the revision petitioner/defendant No.2 and in view of the said pleading, there is no cause of action for the respondent No.1/plaintiff to file the subject suit. The Court below erroneously dismissed the subject Interlocutory Application and ultimately prayed to set aside the impugned order by allowing the Civil Revision Petition as prayed for.

4. On the other hand, learned counsel for the respondent No.1/plaintiff would contend that the Court below is justified in passing the impugned order. There is no legal infirmity in the order under challenge to take a different view and ultimately prayed to dismiss the Civil Revision Petition.

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

“Whether the impugned order dated 16.11.2017, passed in I.A.No.1676 of 2017 in O.S.No.5 of 2007, by the Principal District Judge, Warangal, is legally sustainable?”

6. POINT: Admittedly, the subject suit is filed by the respondent No.1/plaintiff seeking partition and separate possession of the suit schedule properties. The contention put-forth by the revision petitioner/defendant No.2 is that the suit schedule properties were already partitioned and the same was pleaded by the respondent No.1 herein/plaintiff in his plaint. Whereas, the contention of the respondent No.1 herein/plaintiff is that prior partition was for a specific purpose and it was effected only with regard to agricultural lands but not the suit schedule properties. The plaint averments are only required to be taken into consideration to deal with the application of this nature. Since the respondent No.1 herein/plaintiff proved cause of action, the Court below is justified in passing the impugned order. There is no legal infirmity in the order under challenge to take a different view.

The Civil Revision Petition is devoid of merits and is liable to dismissed.

7. Accordingly, the Civil Revision Petition is dismissed. No order as to costs. However, the Court below is directed to dispose of the subject suit in O.S.No.5 of 2017, as expeditiously as possible, preferably within a period of six (6) months from the date of receipt of a copy of the order. Both the parties are directed to cooperate with the Court below for expeditious disposal of the subject suit without seeking unnecessary adjournments.

Miscellaneous petitions, if any, pending, shall stand closed.

05th February, 2020
Vvr

Dr. SHAMEEM AKTHER, J

