

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION No.28 OF 2015

ORDER:

Heard the learned counsel for petitioner and the learned counsel for respondents.

2. The petitioner is defendant in the suit O.S.No.699 of 2010 on the file of the Court of the XVI Additional District Judge, Malkajgiri, Ranga Reddy District (for short, the trial Court). The respondents herein, who are the plaintiffs, filed the above suit for declaration of title and recovery of possession of the property of an extent of Ac.1-25 guntas in survey No.184, situated at Nagaram Village, Keesara Mandal, Ranga Reddy District. The petitioner herein, who is the defendant in the suit, filed I.A.No.1320 of 2010 under Order VII Rule 11 (d) read with Section 151 CPC to reject the plaint. The trial Court dismissed the application, by its order dated 28.10.2014, challenging which, the present Civil Revision Petition is filed.

3. The case of the petitioner is that he purchased the suit property from the father of respondents 1 and 2 and husband of respondent Nos.3 and 7 in the year 1981. Though they executed a sale deed on 17.06.1983, the Inams Tribunal-cum-Revenue Divisional Officer, East Division, after enquiry, granted Occupancy Rights Certificate in favour of the petitioner in respect of the suit property on payment of 60 times of land revenue and the petitioner deposited the said amount. The name of the petitioner was mutated in the revenue records. The respondents preferred an appeal against the said order before the Joint Collector, Ranga Reddy District and the same was dismissed. The order of the Joint Collector was challenged in W.P.No.23280 of 2008, and when the said Writ Petition was dismissed, the matter was carried in appeal i.e., W.A.No.80 of 2009 and the same was also dismissed. When the respondents were trying to interfere with the possession of the petitioner, he filed

O.S.No.198 of 2000 on the file of the Court of Junior Civil Judge, Medchal, Ranga Reddy District and the same was dismissed. But, when the respondents tried to prefer an appeal with delay, and when the application for condonation of delay was dismissed, they filed CRP.No.2554/2010 and the same was dismissed on 21.07.2010. The petitioner states that since the present suit is filed based on the earlier proceedings granting Occupancy Rights Certificate in his favour, the suit should have been dismissed.

4. The learned counsel for the respondents, on the other hand, submits that the respondents never executed any agreement of sale and the sale deed was obtained by fraud. Since the Occupancy Rights Certificate was obtained on the basis of such fraudulent transaction and the said point cannot be decided by the authorities appointed under the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955, the respondents filed the present suit.

5. The learned counsel on either side relied on several judgments before this Court. This Court perused the order passed by the trial Court and it reads as follows:

“5. The claim of the petitioner is that they got Occupancy Rights but, the claim of the plaintiffs is that they are obtained by fraud and forging the thumb impression of their family members.

The plea of the plaintiffs itself is that the Occupancy Rights were obtained by playing fraud of Revenue Authorities. When such is the case no doubt the burden is on the plaintiffs to prove it.

6. Now, at this stage the defendant cannot seek for rejection of plaint because all these matters are trial issues which have to be gone into at the time of trial.

Even assuming the version of the defendant to be true they are at liberty to disprove the case of the plaintiffs. Their claim is they purchased the land in 1981 when such is the case they can produce the documents and rely on them.”

6. This Court feels that the facts pleaded by the petitioner in the petition are relevant facts for consideration of the application filed under Order VII Rule 11(d) of the CPC and the trial Court should have *prima facie* considered those facts before rejecting the application of the petitioner. The manner of disposal of the application of the petitioner is not proper. In the circumstances, the impugned order dated 28.10.2014 passed in I.A.No.1320 of 2010 in O.S.No.699 of 2010 by the trial Court is set aside and the matter is remanded back to the trial Court with a direction to re-hear the parties and pass appropriate orders, within three months from the date of receipt of a copy of this order, in accordance with law.

7. The Civil Revision Petition is, accordingly allowed. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

A.RAMALINGESWARA RAO, J

Date: 02.11.2015

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