

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

C.R.P.NO.1118 OF 2020

ORDER

The petitioner herein presented the suit for the relief of perpetual injunction on the file of Principal Junior Civil Judge, Medchal. By the impugned order and decree dated 01.10.2020 in S.R.No.1724 of 2020, the trial court refused to number the suit, but however, rejected the claim of the petitioner/plaintiff. Aggrieved by the same, the present revision is filed.

Learned counsel for the petitioner submits that the petitioner filed the suit for perpetual injunction, but the trial court while refusing to number the suit, gone into the merits of the claim and rejected the same, which is not permissible.

He submits that the suit is filed for mere injunction and the trial court has to examine the aspect of possession, but the trial court without consider the aspect of possession as on the date of the filing of the suit, and without giving opportunity to the petitioner to prove his case, rejected his claim at the threshold, which is illegal and arbitrary. Therefore, he seeks to set aside the impugned order.

Since the trial court rejected the claim of the petitioner even before numbering the suit, issuance of notice to respondents is not necessary and this court is inclined to dispose of the revision based on the material on record.

Along with the material papers, petitioner filed copy of the plaint. A perusal of the same goes to show that petitioner is claiming right in the property based on a notarized document dated 11.04.2014, and his claim is that since the date of purchase he has been in possession and enjoyment by constructing a tin shed, and that when he started renovation for construction of a house, the respondents, without any right, have illegally intervened and stopped the construction and damaged the tin sheets on 18.09.2020. Therefore, he filed suit for bare injunction, and he also filed interlocutory application seeking temporary injunction.

A perusal of the impugned order goes to show that the trial court has not rejected the plaint under Order 7 Rule 11 of C.P.C., and no provision of law is quoted, but it has gone into the merits of the claim, and recorded finding that the plaintiff has no valid title and that he could not prove his possession as on the date, and that the notarized document filed by him does not disclose the plot number and the boundaries, and thus there is no identity of the property, and accordingly refused to number the suit. If court below is of the opinion that plaint has to be rejected, the same should be in accordance with law.

It is to be further noticed that the above aspects can be gone into only during trial, and that when the plaintiff fails to substantiate his claim by leading cogent evidence, then such findings can be recorded. But, even before numbering the suit, and without giving opportunity to the petitioner, recording such adverse findings, cannot be sustained, and it shows that the impugned order is passed without application of mind.

For the foregoing reasons, the impugned order is set aside, and the matter is remitted back to the trial court to number the suit, if the same is otherwise in order, and proceed in accordance with law.

It is made clear that this court has not expressed any opinion on merits or demerits of the matter.

The revision petition is accordingly allowed to the extent indicted above.

Interlocutory applications pending, if any, shall stand closed. No costs.

A.RAJASHEKER REDDY,J

DATE:04—11—2020

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