

THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**Civil Revision Petition No.1065 of 2023****ORDER:**

Aggrieved by the order, dated 13.04.2023, passed in I.A. No.475 of 2022 in O.S.No.600 of 2015 on the file of the learned Senior Civil Judge, Ramachandrapuram, whereby the petition filed under Order 32 Rule 15 CPC to stall the further proceedings of the Suit and to return the plaint, was dismissed by the trial Court, the instant Civil Revision Petition is filed questioning the legal validity of the said order.

- 2) Heard learned counsel for the petitioners.
- 3) The petitioners are the defendants in the Suit in O.S. No.600 of 2015 on the file of the learned Senior Civil Judge, Ramachandrapuram. The said Suit was filed for cancellation of the registered sale deed and the gift deed. The Suit was filed by the plaintiff represented by his next friend on the ground that the plaintiff is of unsound mind. The defendants have filed their written statement opposing the claim. In the written statement they have also pleaded that the next friend is not competent to file Suit on behalf of the plaintiff and that the plaintiff is not a person of unsound mind.

4) After the written statement was filed, necessary issues were framed by the trial Court. Thereafter, the Suit was posted for trial and the trial in the said Suit commenced. Evidence of the plaintiff was closed. Thereafter, the Suit was posted for evidence of the defendants and DW.1 was also examined.

5) At that stage, the present petition under Order 32 Rule 15 CPC was filed alleging that the very filing of the Suit by the next friend on behalf of the plaintiff on the ground that the plaintiff is of unsound mind is defective as the procedure contemplated under law relating to filing of a Suit by the next friend on behalf of the plaintiff on the ground of unsound mind of the plaintiff is not followed. Therefore, it is prayed to return the said plaint.

6) The trial Court after hearing both the parties, by the impugned order, has dismissed the said petition. The trial Court held that earlier also the petitioners have filed applications for rejection of the plaint on the ground of lack of jurisdiction of the Court and on other grounds and all the said petitions were dismissed and now again the present petition is filed at the stage of adducing evidence by the defendants. The trial Court also held in its order that the plaintiff also died during the course of the

trial and thereafter, the Suit is being continued by the next friend on the ground that he got interest in the Suit property.

7) The said order of the trial Court is now mainly challenged on the ground that as the procedure contemplated under Order 32, Rule 15 CPC for filing the Suit by a next friend on the ground that the plaintiff is suffering from unsound mind is not adhered. So, it is prayed to return the plaint at the fag end of the trial of the Suit when the matter stood posted for adducing further evidence of the defendants.

8) When the evidence of the plaintiff was closed and when the Suit is posted for adducing the evidence of the defendants, in the considered view of the Court, at that stage, the plaint cannot be returned or rejected. The grounds on which the plaint can be rejected are clearly enumerated under Order 7 Rule 11 CPC. The present ground, which is pleaded that the Suit is not properly instituted by the next friend by adhering to the procedure contemplated under Order 32 Rule 15 CPC, is not made a ground for rejection of the plaint under Order 7 Rule 11 CPC. Even, it is not a ground for return of the plaint as contemplated under Order 7 Rule 10 CPC. So, the petition filed for return of the plaint at that stage is totally misconceived. Therefore, this Court do not

find any legal flaw or infirmity in the impugned order of the trial Court warranting interference of this Court with the same.

9) Therefore, the Civil Revision Petition is dismissed at the admission stage. However, it is left open to the defendants to raise the said plea, relating to the institution of the Suit by the next friend on behalf of the plaintiff on the ground that the plaintiff is of unsound mind and non-compliance of the procedure contemplated under Order 32 Rule 15 CPC, at the time of final adjudication of the Suit. No costs.

Consequently, miscellaneous applications, pending if any, shall also stand closed.

JUSTICE CHEEKATI MANAVENDRANATH ROY

Date:04.07.2023.

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