

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL No.452 of 2010

JUDGMENT:-

This Civil Miscellaneous Appeal under Order XLIII Rule 1 of the Code of Civil Procedure ('the Code', for brevity) by the appellant/plaintiff is directed against the order dated 15.02.2010 of the learned Senior Civil Judge, Huzurabad of Karimnagar District, passed in C.F.No.100 of 2010 (Unregistered suit of the year 2010). By the said orders, the learned Senior Civil Judge had rejected the plaint on the ground that the suit is not instituted within the time allowed under law of limitation.

2. I have heard the submissions of the learned counsel for the appellant/plaintiff ('the plaintiff', for brevity). As there was no representation for the respondents/defendants on 26.08.2010, the matter was adjourned to today. Today also, there is no representation for the respondents/defendants ('the defendants', for brevity). Hence, it is treated that the defendants have no submissions to make in this matter. I have perused the material record.

3. The sole plaintiff had brought the suit against the defendants for specific performance of an agreement of sale in respect of an immovable property. At the stage of scrutiny and numbering of the suit, the trial Court had passed the impugned order rejecting the plaint for the reason that the suit claim is barred by the law of limitation.

4. The learned counsel for the plaintiff would submit that in the plaint, it is categorically averred that the suit claim is within the time and that the defendants, having received on 18.03.2006 a further sale consideration of Rs.3,00,000/-, apart from Rs.1,00,000/-, which was already paid, had executed a receipt on the even date and that in the said receipt there is a stipulation to obtain the registered sale deed on payment of the balance amount before 30.06.2007 and that if the said receipt is taken into consideration, the suit instituted on 08.02.2010 is well within time and is not

barred by the law of limitation and that the trial Court had failed to take into consideration the recitals in the said receipt, which was referred to in the plaint, particularly in the cause of action paragraph of the plaint and that, therefore, the impugned order is unsustainable. He would further submit that at the time of scrutiny of the plaint, the trial Court has only to take into consideration the plaint averments and that the plaint shall be rejected only if the suit appears from the statement in the plaint to be barred by any law including the law of limitation, and that in the case on hand, if the plaint averments are taken into consideration, the same disclose that the suit is well within time and is not barred by law of limitation and that the trial Court had failed to consider the facts and the legal position applicable in proper perspective and in a correct manner and had erroneously rejected the plaint and that therefore, the order impugned is liable to be set aside.

5. Having given earnest consideration to the facts and the submissions, this Court is satisfied that the Court below, while passing the impugned order rejecting the plaint had failed to take note of the receipt dated 18.03.2006 which is relied upon by the plaintiff and which was also referred to in the plaint averments, particularly in the cause of action paragraph of the plaint. Had the trial Court looked into the recitals of the said receipt and the plaint averments, the trial Court would not have passed the impugned order as the averments in the plaint sufficiently disclose that the suit is within time. Order VII Rule 11 of the Code, which deals with rejection of plaint, states that the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. In the case on hand, on a meaningful reading of the plaint it does not appear from the statement in the plaint that the suit is barred by law of limitation. Viewed thus, this Court finds that there is acceptable merit in this appeal and that the impugned order, which is erroneous, is liable to be set aside and that the appeal deserves to be allowed.

6. In the result, the Civil Miscellaneous Appeal is allowed and the impugned order is set aside. The trial Court is directed to number the suit, if it is otherwise in order, without going into the aspect of limitation which is a

mixed question of fact and law by leaving it open to be considered, if necessary, at an appropriate later time. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this appeal shall stand dismissed.

M. Seetharama Murthi, J

27th August, 2015

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