

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION NO. 6167 OF 2009 & CRP MP No. 3697 of 2011

ORDER:

CRP MP No. 3697 of 2011 is filed by the first petitioner herein seeking permission to withdraw the Revision as against him without prejudice to the adjudication relating to other petitioners. He also submits that the matter was settled out of Court with the respondent and therefore, he wishes to withdraw the revision.

Sri N. Sriramurthy, learned counsel appearing for respondent has no objection.

Therefore, CRP MP No. 3697 of 2011 is allowed and the CRP is dismissed as withdrawn as regards the first petitioner.

As regards the other petitioners, there is no representation. No counter affidavit has been filed.

The suit O.S.No. 251 of 1978 filed by the respondents was decreed on 14.12.1982. A petition for review of the said judgment was filed on 31.12.1982 which was dismissed on 25.3.1983. A.S.No. 662 of 1983 was filed subsequently challenging the judgment in the suit and in CMP No. 3663 of 1983 this Court granted stay of execution of decree. The appeal filed by the appellant was dismissed for non-prosecution on 10.10.1995. E.P.No. 337 of 2007 was filed on 6.10.2007 to execute the EP in the suit.

An objection was raised by JDRs in the E.P that EP should have been filed within 12 years from 14.12.1982 and that by 6.10.2009 the decree in the suit became time barred. This plea was rejected by the Court below following the judgment of the Supreme Court in **Shyam Sunder Sarma Vs. Pannalal Jaiswal and Others**^[1]. The Court below held that even if the appeal is dismissed for default or for non-prosecution, it ultimately confirms the judgment of the trial Court; therefore, the doctrine of merger applies; and consequently limitation for filing the EP commenced from the date of dismissal of appeal for default on 10.10.1995. It therefore, held that EP filed on 6.10.2007 is within time.

I agree with the reasoning of the Court below.

Therefore, I do not find any merit in the Revision and accordingly, the Civil Revision Petition is dismissed. Interim stay granted on 24.12.2009 in CRP MP No. 8456 of 2009 is vacated. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, pending if any, shall stand dismissed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 08.06.2015
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^[1] AIR 2005 SC 226