

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION NO.4262 OF 2015

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ORDER:

This Civil Revision Petition is filed against the order, dated 29-06-2015 in I.A.No.285 of 2014 in O.S.No.316 of 2014 on the file of the V Senior Civil Judge, City Civil Court, Hyderabad.

2. Petitioners herein are the defendants, whereas the respondents herein are the plaintiffs before the trial Court.

3. Petitioners herein filed the interlocutory application under Order VII Rule 11 of the Code of Civil Procedure, 1908 praying the Court to reject the plaint in O.S.No.316 of 2014 on the ground that the suit was barred by limitation as the alleged agreement of sale, dated 16-12-1983 cannot be asked to be enforced at this length of time, that the earlier proceedings emanating from O.S.No.1138 of 1991 ended in favour of the petitioners herein and stamp duty and penalty was not paid on the agreement of sale.

4. Respondents herein filed the counter affidavit to the said application denying the averments made in the affidavit filed in support of the application.

5. After considering the rival submissions, the trial Court dismissed the application vide impugned order, dated 29-06-2015. Challenging the same, the present revision is preferred.

6. The suit was filed seeking injunction in respect of 'B' schedule properties and specific performance of agreement of sale, dated 16-12-1983 in respect of 'A' schedule properties. A perusal of the impugned order shows that each objection raised by the petitioners for maintainability of the suit in support of rejection of the plaint was considered by the trial Court and ultimately held that deficit stamp duty and penalty on the document are to be decided only during the course of trial and considering the averments made by the

respondents herein in the plaint, which made out cause of action for them to file the present suit, it was held that the petitioners have not made out valid grounds for rejection of the plaint and accordingly, dismissed the application.

7. Learned counsel appearing for the petitioners herein seriously contended that a perusal of plaint *prima facie* does not disclose the maintainability of the suit within a period of limitation and there was no averment in the plaint in that regard.

8. The trial Court in its order stated that the Court itself took an objection with regard to limitation and numbered the suit only after proper explanation of the same and hence, the limitation become a triable issue and it cannot be adjudicated at this stage. It is clear from the record that the petitioners had already filed a written statement and in view of the same, it is hoped that the trial Court would frame appropriate issues including on the point of limitation at the time of the trial of the suit. In the circumstances, the application was rightly dismissed by the trial Court and it does not warrant any interference by this Court.

9. Accordingly, the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous petitions, if any pending in this revision shall stand closed.

A.RAMALINGESWARA RAO, J

DATED: 24-11-2015

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