

**THE HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY**  
**CIVIL REVISION PETITION No.1281 OF 2009**

**ORDER:**

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dated 05.02.2009 passed by the I Additional Senior Civil Judge, Nellore, in I.A.No.1251 of 2007 in O.S.No.492 of 2005 whereby the petition filed by the petitioners to implead respondents 14 to 51 as defendants 14 to 51 in the suit and to amend the plaint under Order VI Rule 17 of the Code of Civil Procedure (for short 'CPC') pleading that the Managing Partners of the Firm have not been properly rendering true and correct account of the income of Firm and that defendants 5, 7, 11 and 12 have transferred some of the plots in favour of their friends and relatives, nominally, incorporating false recitals in the sale deeds, that they have no authority to sell said plots, the sale consideration was not credited to the partnership account. As the petitioner had no correct information regarding the details of sale deeds executed, he could not implead the purchasers as parties to the suit and that to avoid multiplicity of proceedings, respondents 14 to 51 are proper and necessary parties to the suit and sought for different reliefs like cancellation of various sale deeds executed in their favour by defendants 5, 7, 11 and 12.

Respondent No.39 alone filed counter in I.A. denying material allegations contending that the respondent is no way concerned with the transactions between the partnership Firm and its partners, the act of the Managing partner is binding on all the partners and the respondent is a bonafide purchaser for which he cannot be dragged to the Court and that the sale deed cannot be set aside. It is also further contended that petitioner is aware about purchase and finally prayed to dismiss the petition.

The trial Court after hearing both the parties, passed the order

under challenge in this revision and the trial Court dismissed the petition only on the point of limitation.

The present revision is filed raising various contentions more particularly that execution of sale deeds by defendants 5, 7, 11 and 12 is without any authority and apart from that the GPA executed by managing partner of the partnership Firm has elapsed and it was not extended till 1996. On this ground alone, the sale deeds executed in favour of the proposed parties are not valid.

During the course of argument, the counsel for the petitioner Sri M.V.S. Suresh Kumar would contend that the sale transactions covered by the documents executed in favour of respondents 14 to 51 are not binding on the parties unless the amount collected by defendants 5, 7, 11 and 12 are credited to the account of Partnership Firm and that the limitation is a mixed question of fact and law and it cannot be decided at the stage of impleading the proposed respondents 14 to 51 and prayed to allow the application.

Sri P.Rajashekar, counsel appearing for respondents 14 to 17, and Sri P.Sridhar Reddy, counsel for respondents 29 and 31, supported the order while contending that when the proposed claim for cancellation is barred by limitation, they cannot be impleaded as parties and that too the scope of trial in suit for dissolution of partnership is limited. Therefore, the order does not call for interference of this Court and prayed to dismiss the revision petition.

Undisputedly, the petitioner and respondents 1 to 12 constituted as partnership firm under the name and style of Maruti Real Estates-R.13 for carrying on real estate business and sold some of the plots to various persons. However, there were disputes among the partners as such a suit for dissolution of partnership firm was filed and for

rendering true and correct account of income of the Firm and for recovery of share of the petitioner. The scope of dissolution of Firm is limited and according to Section 39 of the Indian Partnership Act, dissolution of partnership is only between the partners of the Firm and third party is no way concerned with the dissolution of the Firm. Therefore, the persons other than partners of the Firm are neither proper nor necessary parties to the suit for dissolution of a Firm. Strangely, the petitioner filed I.A.No.1251 of 2007 to convert the suit for dissolution of partnership Firm and rendition of true and correct accounts of Firm into a suit for cancellation of various registered documents. Suit for dissolution of a partnership Firm is governed by provisions of Indian Partnership Act, whereas, cancellation is governed by Section 31 of the Specific Relief Act. Various sale deeds were executed on different dates referred in the annexure to the petition by Maruti Real Estate represented by Pathapati Seshareddy and Tiruveedhi Subbarayudu being partners. According to the finding of the trial Court, the claim of the petitioner for cancellation of sale deeds is barred by limitation. Even assuming for a moment that the details furnished in annexure to the petition regarding date of purchase are true, the same took place long prior to filing of the petition and mostly before filing of the suit.

The only question before me is question of limitation, which is mixed question of fact and law. But when there is no dispute regarding the fact that the sale deeds were executed on a particular date, no evidence is required to be adduced to substantiate the contention of the petitioner. Therefore, there is absolutely no dispute regarding the dates of execution of sale deeds on various dates mentioned in annexure to the petition. According to Article 59 of the Limitation Act, limitation of three years starts from the date of knowledge. All the documents referred in annexure are registered sale deeds and the registration itself is a notice to the public under Section 3 of Transfer of

Property Act. Thus, the petitioner is expected to know the date of execution on the date of its registration and the limitation starts from the date of registration. Therefore, by date of filing of the petition, three years period has been elapsed from the date of registration. The sole ground on which the trial Court dismissed the application is that the claim for cancellation is barred by limitation. In a recent judgment reported in ***L.C.Hanumanthappa v. H.B.Shiva Kumar***<sup>[1]</sup> it is held that a claim barred by limitation cannot be permitted to be included in a pending suit. Earlier in ***Muni Lal v. The Oriental Fire & General Insurance Company Limited and another***<sup>[2]</sup>, the Apex Court held that an amendment to include relief after becoming time barred is not permissible. Thus, in view of the law laid down in above two judgments, a time barred claim cannot be permitted to be included in a pending matter and the Court need not wait till completion of trial by impleading the third parties. Therefore, the finding of the trial Court is totally in accordance with law declared by the Apex Court in above two judgments and on this ground alone this Court cannot interfere with the finding recorded by the trial Court.

The scope and power of this Court under Article 227 of Constitution of India is limited and such power can be exercised only in a case where subordinate Court failed to exercise the jurisdiction vested on it or exercised the jurisdiction which is not vested on it or irregular exercise of jurisdiction. But here, there is nothing to show that the trial Court did not exercise jurisdiction vested on it or exercised the jurisdiction which is not vested on it or exercised in irregular manner. Therefore, this Court cannot interfere with the order passed by the trial Court while exercising power under Article 227 of Constitution of India.

In view of the foregoing reasons, I find no grounds to interfere

with the order under challenge passed in I.A.No.1251 of 2007 in O.S.No.492 of 2005 dated 05.02.2009 by the I Additional Senior Civil Judge, Nellore.

Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

Miscellaneous petitions pending in the writ petition, if any, shall stand closed.

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**M.Satyanarayana Murthy, J**

22<sup>nd</sup> July, 2016.  
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[\[1\]](#) (2016) 1 SCC 332

[\[2\]](#) AIR 1996 SC 642