

IN THE COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF
TELANGANA AND THE STATE OF ANDHRA PRADESH

Civil Revision Petition No.3002 of 2016

Between:

Lambadi Halavath Bixapathi
and others

... Petitioners

and

M/ s Datla Educational Society

... Respondent

DATE OF JUDGMENT PRONOUNCED : 29.09.2016

SUBMITTED FOR APPROVAL :

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

1. Whether Reporter of Local newspapers
May be allowed to see the Judgments? Yes/ No
2. Whether the copies of judgment may
Be marked to Law Reporters/ Journals? Yes/ No
3. Whether Their Ladyship/ Lordship wish
To see the fair copy of the Judgment? Yes/ No

*HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

+CIVIL REVISION PETITION No.3002 of 2016

% Dated 29.09.2016

Between:

Lambadi Halavath Bixapathi
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! Counsel for the petitioners : N.Manohar,

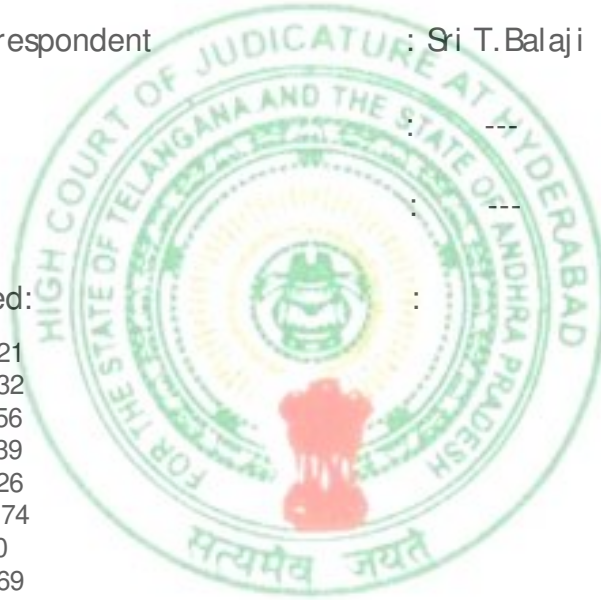
^ Counsel for respondent : Sri T.Balaji

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? Cases referred: :

- ¹ AIR 1977 SC 2421
- ² (2009) 5 ALD 332
- ³ (2010) 5 ALD 656
- ⁴ (2013) 5 ALD 439
- ⁵ (2011) 9 SCC 126
- ⁶ (2007) 15 SCC 174
- ⁷ (1998) 2 SCC 70
- ⁸ (2008) 2 ALD 669
- ⁹ (2013) 5 ALD 176
- ¹⁰ (2005) 5 ALT 278



HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

C.R.P.No.3002 OF 2016

ORDER:

The revision petitioners are the defendants 1 to 5 in O.S.No.53 of 2015 on the file of the learned Senior Civil Judge, Medak. The suit is maintained by the plaintiff/ respondent on the contract for sale to direct the defendants 1 to 5 to execute registered sale deeds in respect of the respective extents and for consequential permanent injunction. No doubt there is no any written agreement inter se between the parties which is mentioned in the plaint much less enclosed as a document. The plaint averments show from paras-3 and 4 that after execution of registered sale deeds which are documents 1 and 2 of the years 2007 and 2008, the plaintiff approached the Tahasildar, Shankarampet-R and applied for mutation and mutated only 0.13guntas in Sy.No.147/ U belongs to the 1st defendant, Ac.1-00 in Sy.No.147/ U1 belongs to the 2nd defendant and Ac.1.26guntas in Sy.No.158/ A belongs to Lambadi Lalu i.e. father of the defendants 3 to 5 and issued proceedings in the year 2010 and for the remaining land, the Tahasildar issued an endorsement stating that the defendants are having only lands in the above survey numbers for the above extent vide endorsement dated 05.11.2011 No.B/ 5242/ 11. Then the plaintiff has approached all the defendants and requested to execute sale deed by incorporating the other survey numbers of the defendants but all the defendants, with dishonest intention, having received total consideration towards their entire land, postponed to execute sale deed and played fraud by manipulating the revenue records at the time of registration and cheated the plaintiff and the plaintiff filed criminal case. The plaintiff even repeatedly reminding

them to execute the sale deed. It is stated that the 1st defendant already delivered possession of 1.38 guntas and 2nd defendant delivered total 0.18¾guntas, having sold the same under the registered sale deeds. The father of the defendants 3 to 5 also delivered possession of 0.22guntas adjacent to the land sold with same value and all the defendants received total consideration for the land sold and having delivered the possession, executed sale deeds. The plaintiff repeatedly requested and demanded them to execute the sale deed as per the agreement but they kept on postponing from time to time and finally refused to come for execution of sale deed on 01.11.2015. Having no other go, the plaintiff maintained the suit seeking direction to the defendants to execute and register sale deeds.

2. Now coming to the factual scenario, it shows the defendants on service of summons filed I.A.No.48 of 2016 to reject the plaint. The sum and substance of their averments in support of the petition to reject the plaint by placed reliance on the paragraphs 3 and 4 of the plaint supra is in saying once the plaintiff came to know of the alleged extents possessed by the defendants from the certificate issued by the Tahasildar dated 05.11.2011 of other extents does not belong to them and that itself is the starting period of limitation to be computed to entertain the suit if at all for a declaratory relief or even for specific performance or even on the ground of alleged fraud and the suit not filed within the three years therefrom, is clearly barred by law and thereby the plaint is liable to be rejected under O.VII Rule 11(d) CPC.

3. The plaintiff opposed the petition and ultimately the lower Court by order dated 31.03.2016 dismissed the petition which is impugned herein.

4. The observations mainly from paras-9 to 12 to the result of dismissal in paragraph 13 of the impugned order of the lower Court are that though the expression of the Apex Court in *T.Arivandanam Vs. T.V.Satyapal*¹ speaks that on a meaningful, not formal reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, Court should exercise the power to reject the plaint and the other decision placed reliance of this Court is *Kotha Dhanalakshmi Vs. Bandi Sreenivasulu Reddy*² on the scope of Section 3 of the Limitation Act that the suit when barred by limitation, it is the obligation of the civil Court to examine the matter presented before it with reference to the question of limitation, even if such an objection not raised by the defendants, the trial Court should have rejected if prima facie so barred and the other decision referred of this Court is in *C.Venkata Sreeramakrishna Rao Vs. J.L.Narasimha Rao*³ where it was held that suit barred by limitation by the very statements appearing in the plaint, the plaint is liable to be rejected and the other decision placed reliance of the Division Bench of this Court is in *Reemana Kaushik Vs. Shobhit Kaushik*⁴ it is observed therein that the Court has to take into consideration the pleadings in the plaint on its face value and if there is any dispute, that needs to be resolved only after trial. It is only when the contents of the plaint taken on face value and they still do not constitute cause of action or suit claim is barred by law invoking Order VII Rule 11 of C.P.C. the application to reject the plaint can be allowed. It is therefrom observed referring to the fact that as it is a mixed question of facts and law and from the plaint, prima facie, the

¹ AIR 1977 SC 2421

² (2009) 5 ALD 332

³ 2010 (5) ALD 656

⁴ 2013 (5) ALD 439

cause of action from commencement of limitation mentioned as 01.11.2015 and the defendants once to rely on the endorsement of Tahasildar dated 05.11.2011, the same can be adjudicated and not prima facie suffice to reject the plaint by placing reliance on it. It is now impugning the same, present revision is filed.

5. Heard both sides. Perused the material on record.

6. In the course of hearing, the learned counsel for the revision petitioners/ defendants supra placed reliance on Khatri Hotels private Limited Vs. Union of India⁵. It is a case in relation to the application of Article 58 of the Limitation Act, so as to decide for computing of the limitation of three years from when cause of action accrues. It was interpreting said provision vis-à-vis Article 120 of the Limitation Act, the observation was that there is a difference in the meaning by virtue of the Article 58 of the Limitation Act, 1963. The cause of action first accrues and the period of limitation of three years to be counted commenced from when there is a notice of demand served and when that itself constitutes the commencement of cause of action, any subsequent accrual of cause of action is not criteria for computing the period of limitation. The other decision placed reliance is in Janardhanam Prasad Vs. Ramdas⁶ wherein referring to Section 3 of the Transfer of Property Act (for short, 'the TP Act'), Article 54 of the Limitation Act, it was held that the registered sale deed and possession that constitutes notice under Section 3 of the TP Act, that is the period to be computed for three years to suit claim for specific performance invoking article 54 of the Limitation Act. The other decision placed

⁵ (2011) 9 SCC 126

⁶ (2007) 15 SCC 174

reliance is ITC Limited Vs. Debts Recovery Appellate Tribunal⁷, the facts in the case show that there was no cause of action even from reading of the plaint. Thereby, it was held even not only before filing of written statement but also after commencement of trial, recourse to Order VII Rule 11 (a) of CPC seeking to reject the plaint for lack of cause of action, is held available. The other decision placed reliance is K.L.V.Prasadarao Vs. K.Venkateshwara Goud⁸, the suit filed is for declaration of the sale deeds executed in favour of defendants 8 to 11 as null and void and the sale deeds in question were registered by the plaintiff himself on 24.06.2000 and thereby under Section 3 of the TP Act, the date 24.06.2000 itself is a notice to take into consideration by the executants and the suit not maintained within the three years thereby barred by limitation invoking Article 58 of the Limitation Act for the said declaratory relief. The other decision placed reliance is M.Sridhar Vs. A.P.Cooperative Tribunal⁹ wherein it was held in relation to the power of the High Court under Article 226 of the Limitation Act, raising issue for the first time before the High Court, not raising before Arbitrator and Co-operative Tribunal under the Act, there was observation that allegation of fraud vitiated prosecution on that ground the limitation of three years prescribed under Article 58 of the Limitation Act must be computed from the date of knowledge and by taking Section 3 of the TP Act, the notice itself is within that meaning as starting period. The other decision of the Division Bench of this Court in Thota Rambabu @ Ramu Vs. Cherukuri Venkateshwararao¹⁰ referring to Section 18 of the Limitation Act and the Articles 54 and 55 of the

⁷ 1998(2) SCC 70

⁸ (2008) 2 ALD 669

⁹ 2013 (5) ALD 176

¹⁰ 2005 (5) ALT 278

Limitation Act and Order VII Rule 11 C.P.C. is with observations that the suit filed 10 years after the date of alleged agreement and not even filed within the three years to the date of notice issued and refusal by non-performance as starting period to be computed therefrom as per the 2nd limb of Article 54 of the Limitation Act is barred by law and thereby upheld the rejection of plaint.

7. From scanning the law covered by the expressions surpa, need not to bulk further by reproducing the provisions, coming back to the facts, the certificate of the Tahasildar dated 05.11.2011 only speaks that pursuant to the sale deeds of the alleged delivery of possession of the property referring therein executed by the defendants 1, 2 and father of the defendants 3 to 5, there is no property available as per the revenue record and it falls short on survey. That is not the end of the plaint pleading as it is further stated that pursuant to which the plaintiff has been demanding the defendants to execute sale deeds for other survey numbers and the defendants even postponing and it is ultimately stated that while they were so postponing ultimately they refused to execute rectification deeds on 01.11.2015 and that is the cause of action to compute the period of limitation to the date of suit filed on 04.12.2015 as within the three years.

8. It is a mixed question of fact and law practically whether the date 05.11.2011 can straightaway be taken as knowledge of the fraud played by the defendants on the plaintiff, merely because of certificate issued by the Tahasildar of land is not available as per the revenue record. That is the crux to be decided only on letting in evidence. If that is to be established, the plaint can be said barred by limitation. If

not, it is within time. Once such is a mixed question of fact and law, it does not permit to reject the plaint from that single sentence, that too when the law is very clear from the expressions supra that a plaint on its face value by taking the allegations as if true if barred by limitation, then only to reject the plaint and not otherwise though the power of rejection is available right from the filing of suit till end of trial. In view of the above, there is nothing to interfere with the impugned order herein, while sitting in revision.

9. In the result, the Civil Revision Petition is dismissed. Consequently, miscellaneous petitions, if any pending in this revision, shall stand closed. There is no order as to costs.

Date: 29.09.2016

Note: L.R. copy to be marked.
b/ o. Vvr

Dr. B. SIVA SANKARA RAO, J

