

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.1194 of 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India by the unsuccessful petitioner/4th defendant (hereinafter referred to as 'the 4th defendant'), is directed against the order dated 19.08.2015 passed by the learned XXII Junior Civil Judge, City Civil Court, Hyderabad, in I.A.No.319 of 2014 in O.S.No.229 of 2014 filed under Order VII Rule 11 (d) read with Order XIV Rule 2 of the Code of Civil Procedure, 1908, requesting to reject the plaint on the ground that the suit is barred by law of limitation.

I have heard the submissions of Sri M.Karthik Pavan Kumar, learned counsel for the petitioner/4th defendant, and Ms. K.Udaya Sri, learned counsel for respondents 1 to 3/plaintiffs. Respondents 4 to 6 herein are stated to be defendants 1 to 3 in the suit. I have perused the material record.

The facts, which are necessary to be stated as a preface to this order, in brief, are as follows:

The plaintiffs brought the suit against the defendants for declaring them as legal heirs of late Ramaraju Nageswara Rao and to grant such other reliefs as the Court deems fit and for costs. The 4th defendant, who is resisting the suit, filed the aforementioned application requesting to reject the plaint *inter alia* contending that the suit is hopelessly barred by limitation inasmuch as it is categorically stated by the plaintiffs that

Ramaraju Nageswara Rao, the husband of this defendant, died on 11.11.2009 and as they further admitted about their knowledge that their request for release of pensionary benefits was rejected by the official respondents/defendants through a reply letter dated 02.02.2010 on the ground that the 4th defendant and her children had already submitted proposals for pensionary benefits claiming to be the only legal heirs of the deceased Nageswara Rao; and, therefore, the plaintiffs ought to have filed the suit within three years from 11.11.2009, the date of death of the said Nageswara Rao, i.e., on or before 10.11.2012 or by 01.02.2013 as they have got knowledge of the rival claim of the 4th defendant and her family members through the letter dated 02.02.2010 of the official defendants addressed to the 1st plaintiff. Therefore, the specific contention of the 4th defendant in her application is that the suit filed by the plaintiffs on 20.12.2013 is barred by law of limitation even as per the statements in the plaint and, therefore, the plaint is liable to be rejected.

The case of the plaintiffs, in the counter affidavit, is as follows:

The 1st plaintiff is the legally wedded wife of the deceased Ramaraju Nageswara Rao, therefore, she filed the suit for declaration that the plaintiffs are the legal heirs of the said deceased, who died on 11.11.2009. The 1st plaintiff made a representation on 01.12.2009 for settlement of pensionary benefits. The same was under consideration of the higher authorities of the department of the deceased. On the said representation of the 1st plaintiff, the department issued a letter dated 02.02.2010 directing her to submit the documentary evidence to prove that she is the legally wedded wife of the deceased as the 4th defendant

also claimed before the departmental authorities that she is the wife of the deceased. The contention of the 4th defendant that the claim of the plaintiffs was rejected by letter dated 02.02.2010 and, therefore, the suit is barred by law of limitation even as per the averments in the plaint, is not correct. Pursuant to the letter dated 02.02.2010 of the department, the 1st plaintiff made a representation dated 15.03.2010 for issuance of service certificate and that on that representation, endorsement was made by the higher authorities of the department of the deceased and that thereafter she submitted another representation dated 02.07.2012 and subsequent representation dated 23.01.2013 followed by a notice dated 05.02.2013. Therefore, she was making representations continuously for release of the pensionary benefits of her deceased husband. The contention that the suit should have been filed within three years from the date of death of the deceased or in the alternative by 01.02.2013 on having knowledge of the rival claim of the 4th defendant and her family members vide letter dated 02.02.2010 of the official respondents/defendants addressed to the 1st plaintiff, is untenable. This 1st plaintiff made a representation dated 02.07.2013 and subsequently she made application dated 03.07.2013 and sought information under the provisions of the Right to Information Act regarding the pension papers and other documents pertaining to the deceased and the official respondents/defendants issued a reply letter dated 02.08.2013 furnishing the information. The cause of action is continuous and did not come to an end at any point of time; therefore, the suit claim is within limitation and the suit is not barred by law of limitation.

At the hearing before the trial Court, no oral and documentary evidence was adduced. On merits and, by the orders impugned in this revision, the trial Court dismissed the petition. Therefore, the aggrieved 4th defendant filed this revision.

Learned counsel for the 4th defendant while reiterating the case of the 4th defendant, which is already stated supra, in detail, would contend as follows:

Article 58 of the Indian Limitation Act, 1963, stipulates that the time for filing a suit begins to run from the date on which the right to sue first accrues. The trial Court erred in coming to a conclusion that the issue of limitation in the present suit is a mixed question of fact and law and that the said issue has to be decided only after full fledged trial. The deceased died on 11.11.2009 is a fact within the knowledge of the plaintiffs. In fact, the official respondents/departmental authorities of the deceased informed the 1st plaintiff vide letter dated 02.02.2010 that the 4th defendant and her family members made a rival claim. The suit is neither instituted within three years from the date of death of the deceased nor within three years from 02.02.2010, the date of the said letter. The suit is instituted on 20.12.2013. Therefore, it appears from the statement in the plaint that the suit is barred by law of limitation. Therefore, the trial Court ought to have allowed the application of the 4th defendant instead of dismissing the same. The plaint is liable for rejection.

In support of the legal contentions, reliance was placed upon the decision in **Khatri Hotels Private Limited v. Union of India**¹.

Per contra, learned counsel for the plaintiffs, while supporting the orders of the Court below and while reiterating the contentions of the plaintiffs, which are also stated supra, in detail, would emphasize that until the claim of the plaintiffs was specifically rejected by the department, the cause of action, which is a continuous cause of action, will not come to an end and that by letter dated 02.02.2010, the department only informed that there is a rival claim by the 4th defendant as wife of the deceased and directed the 1st plaintiff to submit her representation with documentary proof in support of her claim and, therefore, the matter was still under consideration by the department even as on 02.02.2010 and vide said letter, an opportunity was only given to the 1st plaintiff to prove her relationship with the deceased and substantiate her claim and that her claim was not rejected and the 1st plaintiff was thereafter making representations one after the other and, in fact, she made a representation to obtain information under the Right to Information Act and, in response to that letter, information was furnished on 02.08.2013 and that therefore, the cause of action is a continuous cause of action and did not come to an end as on the date of institution of the suit and hence, the suit is well within time and is not barred by limitation when the plaint averments are harmoniously considered.

¹ (2011) 9 Supreme Court Cases 126

I have bestowed my attention to the facts and I have given my earnest consideration to the submissions.

Dealing first with legal contention, it is to be noted that the facts of the cited case (**Khatari Hotels case supra**) disclose that a suit for declaration and permanent injunction in respect of an immovable property was instituted against the defendants in the year 2000. In the written statement filed in an earlier suit in the year 1990, there was an averment that the suit land belonged to Gaon Sabha and that with urbanization of the village, by notification issued under Section 507 of the Delhi Municipal Corporation Act (DMC Act), same automatically vested in Central Government. Thereafter by another notification issued in 1974 under the provisions of the Delhi Development Authority Act (DDA Act), Central Government transferred the entire land including the suit land to the said authority. Therefore, on facts, it was held that the plaintiffs' right, if any, over the suit land stood violated with the issuance of notification under Section 507 of the DMC Act and in any case, by virtue of notification under Section 22 (1) of the DDA Act or at least on receipt of written statement filed by DDA in the year 1990. In the said decision, the Supreme Court, while advertent to the provision of Article 58 of the Indian Limitation Act, 1963, held that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. The Supreme Court also held that to put it differently, successive violation of the right will not give rise to the fresh cause of action and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day

when the right to sue first accrued. There is no dispute with the legal proposition laid down in the decision. However, in the well-considered view of this Court, the decision cited, is distinguishable on the facts peculiar to the present case. In the case on hand, the right to sue first accrues, only on the denial of the right of the 1st plaintiff to claim the pensionary benefits of the deceased. In this instant case, a plain reading of the plaint does not disclose that any such right of the 1st plaintiff to claim such pensionary benefits of the deceased was ever denied by the official respondents/defendants. When a representation was made by the 1st plaintiff for settling the pensionary benefits of the deceased, she was informed by the letter dated 02.02.2010 that there was a rival claim made by the 4th defendant and her family members; she was further called upon to submit a representation with documentary proof in support of her claim. Thereafter also she submitted representations and ultimately filed the suit on 20.12.2013 mentioning in the paragraph concerning cause of action that the cause of action for the suit arose on 11.11.2009 when the deceased died and on 30.03.2013 when the 2nd defendant issued a letter to the counsel for the plaintiffs. On a consideration of the averments in the plaint harmoniously, this Court is of the considered view that from the plaint averments, it does not appear that the suit is barred by law of limitation and that, on the other hand, it is manifest that the suit is well within time, as per the contentions of the plaintiffs as stated in the plaint. Be that as it may, as rightly held by the trial Court, the issue of limitation, in the facts and circumstances of the instant case, is a mixed question of fact and law. Further, as the plaint

averments, on a meaningful reading of the plaint, do not disclose that the suit is barred by law of limitation, this Court finds that the revision is devoid of merit and that the order impugned in this revision does not, therefore, warrant interference.

Accordingly, the revision petition is dismissed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this civil revision petition shall stand closed.

23.11.2016
v v

M.SEETHARAMA MURTI, J

