

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CIVIL REVISION PETITION Nos.1217 OF 2017

ORDER:

This Civil Revision Petition is filed by the petitioners/plaintiffs against order dated 25.01.2017 in I.A.No.33 of 2016 in O.S.No.258 wherein the Court below dismissed the application filed under Order VI Rule 17 of CPC to amend the plaint pleadings in prayer portion.

The parties hereinafter will be referred to as arrayed in the interlocutory application.

The petitioners/plaintiffs filed suit for grant of perpetual injunction against respondents/defendants. After defendants filing written statement disputing the title of the petitioners, I.A.No.33 of 2016 is filed for amendment of the prayer portion as 'suit for declaration of title and grant of perpetual injunction'. But the same was dismissed by the impugned order dated 25.01.2017 by the Court below holding that the same is barred by limitation.

Heard learned counsel for the petitioners, who submits that in view of the judgment of Hon'ble Supreme Court in **Ragu Thilak D.John v. S.Rayappan and others**¹, without framing any issue regarding limitation, the said aspect cannot be decided in the application at the threshold. The aspect of limitation can only be decided by framing an issue in the suit.

Learned counsel for the respondents had not disputed the principle laid down in the aforesaid judgment cited by the learned counsel for the petitioner.

¹ (2001) 2 Supreme Court Cases 472

In view of the principle laid in the aforesaid judgment of Hon'ble Supreme Court, the Court below cannot decide the limitation aspect in the interlocutory application, without there being any issue, as such, the impugned order is liable to be set aside and accordingly set aside. I.A.No.33 of 2016 is allowed and consequently, the Court below is directed to frame an issue regarding limitation and dispose of the suit in accordance with law.

Accordingly, this Civil Revision Petition is allowed to the extent indicated above. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

09-06-2017
kvs



A.RAJASHEKER REDDY,J

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