

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

C.R.P.NO.1818 OF 2017

ORDER:

Heard Sri G.Ramesh Babu, learned counsel for the revision petitioner and since the point involved in this revision petition does not warrant issuing of notice to the respondent, this court is inclined to dispose of the Civil Revision petition at the admission stage.

2. This revision is filed by the defendants aggrieved by the order dated 07-03-2013 in I.A.No.503 of 2012 in O.S.No.38 of 2011 on the file of the Court of V Additional District Judge, Rayachoty, Kadapa District wherein the learned trial court dismissed the petition filed by the petitioners/defendant Nos.1 and 2 under Order 7 Rule 11(d) of Civil Procedure Code, 1908 (for short "Code of Civil Procedure,1908), r/w Section 3 of Limitation Act.

3. The respondent/plaintiff filed O.S.No.38 of 2011 for specific performance against the petitioners/defendants. The defendants were contesting the said suit by filing written statement *inter alia* contending that the plaint should be rejected as it was barred by law of limitation. Their contention is that the period of limitation to file suit ends by 29-05-2011 but the suit was filed on 08-11-2011 as date fixed for performance was 29-05-2008 as per the agreement of sale. The suit was liable to be rejected under Order 7 Rule 11(d) C.P.C.

4. The respondent/plaintiff filed counter denying the allegations in the petition and he *inter alia* contended that the suit agreement of sale dated 29-05-2008 was in force and the petitioners/defendants got issued a legal notice on 14-11-2011 to the plaintiff/respondent canceling the said agreement of sale dated 29-05-2008 and, therefore, the limitation starts from 14-11-2011 and since the suit was filed within three years from the said date, the suit was well within time.

5. A perusal of the order impugned shows that the suit agreement of sale was dated 29-03-2008 executed by petitioners/defendants agreeing to receive the balance of sale consideration on or before 29-05-2008 and to execute a regular sale deed. They could not execute the sale deed by the said date. On 14-02-2011, the respondents/defendants got issued a notice to the respondent/plaintiff canceling the agreement of sale stating that the plaintiff had no right and the advance paid by him was also forfeited. Then the respondent/plaintiff filed the suit on 08-11-2011 seeking specific performance. The trial court basing on the judgment of this Court in *Meruvu Anji Reddy Vs. Ganapathi Sessaiah*⁽¹⁾ and that since the defendants themselves issued notice on 14-02-2011 cancelling the agreement of sale and since the suit was filed within three years thereafter, the suit was well within time and the plaint cannot be rejected at that stage and the issues are to be dealt in full

¹2011(6) ALD 478

fledged trial with reference to the respective pleas taken by them. Accordingly, the trial court dismissed the petition.

6. In the view of the above order of the trial court, there are no merits in the Civil Revision Petition. The petitioners/defendants are at liberty to raise such plea of limitation during the course of trial and the trial court with reference to the evidence placed before it can decide the said issue on merits.

7. With this observation, the Civil Revision Petition is dismissed. No costs.

7TH APRIL, 2017.
TSNR

U.DURGA PRASAD RAO,J

