

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.3108 OF 2016

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dated 06.02.2016 passed in I.A.No.592 of 2015 in O.S.No.432 of 2012 on the file of the Court of the XI Additional District Judge (F.T.C.), Ranga Reddy District at L.B.Nagar.

2. The contention of the learned counsel for the petitioner is two fold: (1) the trial Court allowed the petition without considering the scope of Order VI Rule 17 of C.P.C.; and (2) the trial Court has not considered the plea of limitation raised by the petitioner.

3. *Per contra*, the learned counsel for the respondents submitted that in pursuance of the order dated 06.02.2016, respondent Nos.1 to 3/plaintiffs amended the plaint copy and the matter is coming up for trial.

4. A perusal of the record reveals that respondent Nos.1 to 3 have filed O.S.No.432 of 2012 on the file of the Court of the XI Additional District Judge, Ranga Reddy District at L.B.Nagar against the petitioner and the fourth respondent herein to cancel the validated sale deed dated 09.02.1984 and all other consequential deeds executed, more particularly, the gift settlement deed dated 23.11.2011 and mandatory injunction. After filing of the chief examination affidavit of PW.1, respondent Nos.1 to 3 herein have filed I.A.No.592 of 2015 in O.S.No.432 of 2012 under Order VI Rule 17 of C.P.C. for amendment of plaint

seeking relief of declaration. The trial Court allowed the said petition. Hence, the revision.

5. There is a title dispute between the parties in respect of the suit schedule property. The fourth respondent herein claiming the property basing on the unregistered sale deed dated 09.02.1984. The petitioner herein claiming the property basing on the gift settlement deed dated 23.11.2011 executed by the fourth respondent in her favour. It is not in dispute that originally one A.Narasimha Reddy had purchased the suit schedule property from A.P. Housing Board on 27.04.1981. The said Narasimha Reddy died on 21.10.2009. As rightly pointed out by the trial Court, the proposed amendment will not change or alter the nature of the suit.

6. The predominant contention of the learned counsel for the petitioner is that the trial Court has not considered whether the proposed amendment is barred by limitation or not?

7. The period of limitation is a mixed question of fact and law. Whether the relief sought by respondent Nos.1 to 3 is barred by limitation or not is purely a disputed question of fact. While deciding the interlocutory applications, the Court ought not to have expressed any opinion with regard to the disputed question of fact. It is needless to say that respondent Nos.1 to 3 are not entitled for the relief of declaration without establishing that they are the owners of the suit schedule property. The petitioner herein can adduce oral and documentary evidence to substantiate her stand that the suit claim is barred by limitation. As observed earlier, the proposed amendment will not alter or change the

nature of the suit. Mere allowing of petition would not prevent the petitioner herein to take a plea of limitation. The trial court has considered all the aspects in right perspective and allowed the petition. There is no illegality or irregularity in the order of the trial Court, which warrants interference of this Court by exercising the jurisdiction under Article 227 of the Constitution of India. Hence, the revision lacks merits and *bona fides*.

8. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

9. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

Date: 07.02.2017
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T.SUNIL CHOWDARY, J

