pHON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition No.1598 of 2018

Order:

Aggrieved by the dismissal of an application for rejection of plaint, the defendant in a suit for specific performance has come up with the revision.

2. Heard Mr. Y.Rama Rao, learned counsel appearing for the petitioner.

3. The rejection of plaint under Order VII, Rule 11 CPC was sought on the short ground that the suit was hopelessly barred by limitation. The suit agreement is dated 21-7-1986 and the suit was filed in the year 2013 with a pleading that it was a possessory sale agreement and that the land in question was involved in proceedings under Urban Land (Ceiling and Regulation) Act, 1976 and that after the repealing Act was notified in the State of Andhra Pradesh in the year 2008, the suit came to be filed.

4. But according to the learned counsel for the petitioner, the claim of the plaintiff in the suit to be in possession pursuant to the agreement of sale, already stood rejected in O.S.No.1013 of 2010 and that therefore when the case was not covered by Section 53A of the Transfer of Property Act, 1882, limitation would start running from the expiry of the period of three years from the date fixed for performing the agreement.

5. But I am unable to agree. Generally, limitation is a mixed question of fact and law. In O.S.No.1013 of 2010, the respondents/plaintiffs did not even file a copy of the agreement of sale. The reason appears to be that even during the pendency of O.S.No.1013 of 2010, the present suit for specific performance had come to be filed. The contention of the learned counsel for the petitioner would have had force if after suffering a finding in O.S.No.1013 of 2010, the respondents had filed a suit for specific performance. This is not the case here.

6. The learned counsel for the petitioner places strong reliance upon the decision of the Supreme Court in ***Fatehji & Company v. L.M. Nagpal***[1], where the Supreme Court applied Article 54 of the Limitation Act, 1963, to uphold the order of the Trial Court rejecting the plaint. But in the said case, as seen from the facts discussed in paragraph-9 of the report, there were no pleadings with regard to oral extension of time. The case before the Supreme Court did not relate to a possessory agreement of sale. Therefore on facts, the said decision is distinguishable.

7. The learned counsel for the petitioner next relied upon a decision of the Madras High Court in ***Punjab National Bank v. J.Samsath Beevi*** (incidentally authored by me) decided on 02-3-2010 to drive home the point that by

[1] AIR 2015 SC 2301

clever drafting an illusion of a cause of action cannot be created.

8. It is true that by clever drafting, cause of action should not be allowed to be created. But all intelligent drafting will not fall under the same category as to deserve a treatment under Order VII, Rule 11 CPC. In the facts and circumstances of the case, it may not be possible to reject the plaint. The suit itself was of the year 2013. Therefore, it will be better for the petitioner also to take a judgment on merits. Hence, the revision is dismissed. However, the Court below is directed to dispose of the suit within a period of 3 (three) months. The applications, if any, pending in this revision shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

06th April, 2018.
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