

HON'BLE SRI JUSTICE S.V.BHATT

C.R.P. No.1922 OF 2013

ORDER:

Heard Mr.K.G.Krishna Murthy, learned senior counsel, for revision petitioner and Mr.Mohd.Abdul Mujeeb for 1st respondent.

The 3rd defendant in O.S. No.1115 of 2009 is the revision petitioner. The revision petitioner filed I.A. No.322 of 2010 under Order 7 Rule 11 of CPC to reject the plaint in O.S. No.1115 of 2009.

The Air Force Officers' Cooperative Housing Society/plaintiff filed O.S. No.1115 of 2009 for cancellation of sale deeds and also the gift settlement deed, agreement of sale etc., referred in the prayer in O.S. No.1115 of 2009. The revision petitioner in the affidavit filed along with I.A. No.322 of 2010 stated that the plaint does not disclose cause of action and the reliefs prayed in the plaint are hopelessly barred by limitation. Therefore, the plaint is liable for rejection under Order 7 Rule 11 (d) of CPC. The sale deeds, against which the prayer is for cancellation was made, were executed long ago and the suit, if one is interested in cancellation, is filed within three years from the date of execution of sale deeds. The 3rd defendant claims as absolute owner of plaint schedule property. The suit is beyond the period of limitation and the plaint is liable to be rejected.

The 1st respondent filed counter affidavit opposing each one of the averments made by the revision petitioner in the affidavit filed in I.A. No.322 of 2010.

The trial Court through the order under revision recorded the following findings:

- “06. But it is the case of the respondent plaintiff is that, they came to know about the execution of the sale deeds by the Hon’ble II Additional District Judge, and also fabricated Principal sale deed and Gift deed in favour of the defendants 1&2 came to know only after receiving the notice from OS No.1339/2007 on the file of II Additional Junior Civil Judge Court, R.R. District. Subsequently it was transferred to this Court and renumbered as O.S.No.33/2010. So the respondent/plaintiff is having cause of action to file the suit.
07. Another point raised by the petitioner for rejection of the plaint is that, already her title was adjudicated by the competent Courts, as such the suit in OS.No.1115/2009 is hit by Section 11 of CPC, but admittedly the respondent/plaintiff is not a party to the suit, the respondent/plaintiff contention is also that, they have no knowledge about filing of the suit by the petitioner/D3 in OS No.74/1999. So the ground of resjudicata is also not applicable to the present petition.
08. It is further ground of the petitioner for the rejection of the plaint is that the suit is barred by limitation. Because , the respondent/plaintiff has to take steps within three years from the year 1984 as the respondent/plaintiff society claiming the right in the said plot was initially sold to another member by name A.A.Narayana under the registered Sale deed dt.15/11/1968 and the said purchaser has expressed his willingness of surrendering the suit plot back to the Society, but no documentation took place to give the effect to the so called surrender and therefore, the suit plot has to be understood as being owned by the Society and the sale deed executed by the Society in favour of C.Satyanarayana dated 6/1/1984 is invalid for the reason that, the said Satyanarayana being a President have prevailed upon the then Secretary to execute the sale

deed dt:6/1/1984, as per the petitioner's case the Society executed the registered sale deed in favour of the petitioner's vendor's donor on 6/1/1984. So the contention of the petitioner is that if the respondent/plaintiff has questioned the execution of the sale deed in favour of the petitioner by the society, the respondent/plaintiff has to take steps within three years from 6/1/2009. But the respondent/plaintiff herein filed the suit in O.S. No.1115/2009 in the year 2009 for cancellation of the document, so it is barred by u/Article 59 of the Limitation Act, 1963.

09. But it is the version of the respondent./plaintiff is that they have knowledge about the execution of the documents only after receiving the notices from OS No.1339/2007 renumbered as OS No.33/2010, they filed the suit within the period of three years from the date of their knowledge. As per the plaint also, they came to know about the execution of the said sale deeds which are relied by the petitioner/D3 herein only after receiving of the summons in OS No.1330/2007. In respect of the documents executed in favour of the petitioner/D3 herein are fabricated, not genuine as contended by the respondent/plaintiff herein have to be decided only after full fledged trial, but not at this stage. As per the Orders of the Hon'ble High Court of A.P. in W.P.No.306/2008 and also W.P.No.2599/2008 also and our Lordships gave a finding that, there are serious questions involved in schedule property which have to be decided by the competent Civil Court, as such the respondent/plaintiff herein filed the present suit for claiming their right. So basing on the above foregoing reasons, the plaint cannot be rejected at this stage."

and dismissed the I.A. Hence the CRP.

Mr.Krishna Murthy contends that the suit since is for cancellation of deeds, the filing of suit must be within the period of limitation. The deeds were executed long ago and the period of

limitation for filing the suit is three years and the plaint should have been rejected under Order 7 Rule 11 (d) of CPC. He further contends that the suit is beyond the period of limitation as the plaintiff has knowledge of the deeds under challenge for more than three years. In support of plea of knowledge in favour of plaintiff, he relies on a few orders/proceedings. Therefore, he prays for setting aside the order under revision and reject the plaint in O.S.No.1115 of 2009.

On the other hand, Mr.Mujeeb contends that admittedly the starting point for reckoning period of limitation is the knowledge of the execution of deeds under challenge. In the case on hand, the 3rd defendant by referring to a few documents now filed in the revision attributes knowledge to plaintiff/1st respondent of documents under challenge. Whether one has knowledge of a document and the starting point for limitation has started, is a fact in issue between the parties and by now accepting the plea of revision petitioner, if plaint is rejected, the 1st respondent housing society suffers prejudice and loss without trial. Hence, he prays for dismissing the revision.

I have heard the counsel and perused the record.

It is well established that the Court is required to take note of the averments in the plaint either for appreciating the cause of action, prayer and whether the plaint is presented within the period of limitation.

The orders/documents now referred by the revision petitioner, no doubt, are anterior to three years from the date of filing the suit.

The cause of action portion, in O.S.No.1115 of 2009 reads that the cause of action arose on 26.04.2007 when the plaintiff received notices in O.S. No.1339 of 2007. Further cause of action arose when the 3rd defendant trespassed into the suit schedule property on 25.09.2008. Further the cause of action arose when the 5th defendant without having any title on the suit schedule land dug the boundaries of the suit schedule property on 06.02.2008. The cause of action is stated by the 1st respondent for invoking prayers already referred to above. It is well settled that where the issue namely, whether the plaintiff is hopelessly barred by limitation or not, if is a mixed question of law and fact, the rejection of plaintiff by accepting stand taken by one of the defendants prejudices the cause pleaded by the plaintiff. The submission of Mr.Krishna Murthy is that the documents filed along with the revision prima facie show that the plaintiff/1st respondent has knowledge of all the deeds which are sought to be cancelled. This Court is of the view that acceptance of the documents on which the revision petitioner relies on would be amounting to accepting the knowledge of these circumstances to plaintiff without trial. I do not see any reason to interfere with the order under revision. The trial Court recorded valid reasons. The revision fails and is accordingly dismissed. The trial Court is directed to dispose of the suit as expeditiously as possible, preferably within two months from the date of receipt of copy of this order. The trial Court considers taking trial on day-to-day basis and, if parties do not cooperate, records reasons and proceeds in the matter in accordance with law.

No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT, J

Date: 14.09.2018
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