

THE HONOURABLE MR.JUSTICE GHULAM MOHAMMED

C.R.P.No. 4595 of 2009

ORDER:

This revision is preferred by the defendants against the order, dated 10.8.2009 passed by the VII Additional District Judge,(FTC), Visakhapatnam in I.A.No.448 of 2009 in O.S. No.171 of 2006 whereunder and whereby the application filed by them under Order XIV Rule 1 CPC for framing additional issues, was dismissed.

2. The petitioners are the defendants. The respondents, who are the plaintiffs, filed the suit for delivery of the suit schedule land. The plea of the petitioners was that on the death of the first plaintiff, his legal heirs were brought on record as plaintiffs 6 to 9 and that the petitioners filed I.A.No.1066 of 2007 for filing additional written statement so as to plead that the suit is barred by limitation, and the same was allowed on 25.02.2008 and accordingly additional written statement was filed. But, the trial court has not framed the additional issues to that effect. Therefore, the present application was filed to frame additional issues on the aspect of limitation.

3. On the other hand, the respondents-plaintiffs stated that the application in I.A.No.268 of 2007 filed by the petitioners under Order VII Rule 11 (d) CPC, for rejection of the plaint was dismissed on merits and the subject matter of limitation was also a crucial point in the said I.A. and that they did not prefer any revision and hence it has become final with respect to limitation point.

4. After hearing both sides, the trial court has dismissed the application filed by the petitioners on the ground that the court has already framed an issue as Issue No.4 on 12.6.2008 as to whether the Agreement dated 16.3.1973 is barred by limitation or not, and as such no separate issues can be framed.

5. Heard the learned counsel for the petitioners and the learned counsel for the respondents.

6. I have perused the record. The suit is of the year 2006. The petitioners

filed the additional written statement specifically taking a plea that the suit is barred by limitation. Once the additional written statement was allowed to be filed with regard to limitation point, a duty is cast upon the trial court to frame the additional issues to that effect. Further, as per the provisions of Order XIV Rule 1 CPC, the trial court ought to have framed the issues when a material proposition of fact or law is affirmed by the one party and denied by the other. Further, the issue framed by the trial court is as to whether the agreement dated 16.3.1973 is barred by limitation or not, whereas the petitioners are seeking to frame an issue as to whether the suit is barred by limitation. In the circumstances, I deem it appropriate to set-aside the impugned order.

7. Hence, the Civil Revision Petition is allowed and the impugned order dated 10.08.2009 in I.A.No.448 of 2009 in O.S.No.171 of 2006 is set-aside and the trial court is directed to dispose of the I.A. afresh in accordance with law. No order as to costs.

GHULAM MOHAMMED,J

25.09.2009
Stp