

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.2545 of 2016

ORDER:

This revision petition is filed under Article 227 of the Constitution of India assailing the orders dated 05.02.2016 passed in I.A.No.549 of 2015 in O.S.No.304 of 2015 on the file of II Additional Junior Civil Judge Court, Vijayawada.

2. Heard the learned counsel appearing for both the parties and perused the material on record.

3. The point that arises for consideration is:

“Whether there is any illegality, irregularity or impropriety in the impugned order?”

4. A perusal of the record reveals that the petitioner filed O.S.No.304 of 2015 on the file of II Additional Junior Civil Judge Court, Vijayawada, against the respondents for perpetual injunction in respect of the suit schedule property. After filing of the written statement by the respondents, the petitioner filed I.A.No.549 of 2015 under Order VI Rule 17 CPC for amendment of the plaint seeking the relief of declaration that the first respondent has not acquired title to the suit schedule property.

5. The respondents filed counter *inter alia* contending that the petition filed by the petitioner is barred by limitation.

6. The trial Court after considering the material available on record, dismissed the petition on two grounds: (1) the petition is

barred by limitation; and (2) if the petition is allowed, the nature of the suit will be changed. Hence, the revision.

7. It is the case of the first respondent that he purchased the suit schedule property in the Court auction in E.P.No.236 of 2007 in O.S.No.1092 of 2007 on the file of IV Additional Junior Civil Judge Court, Vijayawada. The second respondent is the wife of the first respondent.

8. Learned counsel for the petitioner strenuously submitted that the property was sold in the court auction without notice to the petitioner. A perusal of the record reveals that the petitioner is a defendant in O.S.No.1092 of 2007. After passing of decree, the plaintiff in O.S.No.1092 of 2007 filed E.P.No.236 of 2007 for realisation of the decretal amount. The petitioner is a Judgment-debtor in E.P.No.236 of 2007. The executing Court, after following the procedure, conducted auction to sell the suit schedule property. The executing court knocked the bid in favour of the first respondent, who is the successful bidder. The executing Court also issued a sale certificate in favour of the first respondent. For one reason or the other, the petitioner did not choose to challenge the sale certificate issued in favour of the first respondent. Unless until the competent Court set aside the sale certificate issued in favour of the first respondent, the same is legally enforceable and binding on the petitioner.

9. A perusal of the record clearly reveals that the Court Amin delivered the suit schedule property in favour of the first

respondent on 22.07.2010. It is the contention of the petitioner that it is only a paper delivery and actual possession was not delivered to the first respondent. A perusal of the record also reveals that the trial Court closed the E.P. proceedings on 22.07.2010 after delivery of the suit schedule property in favour of the first respondent. The first respondent specifically pleaded the above referred facts in his counter. The petitioner is very much aware of all these facts right from 2010 onwards. The petitioner filed the suit nearly after 10 years of delivery of the property in favour of the first respondent as if she has been in possession and enjoyment of the suit schedule property. A perusal of the record reveals that the claim of the petitioner is barred by limitation. The trial Court considered factual and legal aspects in right perspective and arrived at a conclusion that the petition filed by the petitioner is barred by limitation.

10. If the petition is allowed, certainly it will change the cause of action as well as the nature of the suit. It is a settled principle of law that the Court has to consider whether the proposed amendment is allowed, the same will change the cause of action as well as the nature of the suit. If allowing of amendment petition would lead to change of cause of action and the nature of the suit, certainly the petition is not maintainable. The trial Court considered all these aspects in right perspective and dismissed the petition. The trial Court has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing with the findings recorded by the Court below.

There is no illegality, irregularity or impropriety in the orders passed by the trial Court warranting interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India. Hence, the revision petition lacks merits and the same is liable to be dismissed.

10. In the result, the Civil Revision Petition is dismissed. There is no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Dt:11.12.2018
Rns

T.SUNIL CHOWDARY, J

