

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

CRP No.5192 of 2015

ORDER:

This Civil Revision Petition is filed questioning the order dated 26.06.2015 in IA No.172 of 2015 in O.S.No.50 of 2014 passed by the XI Additional District Judge, Tenali.

The suit O.S.No.50 of 2014 is filed for specific performance of agreement of sale. After the suit was filed, an application in IA No.172 of 2015 was filed under Order VII Rule 11 CPC seeking rejection of the plaint on the grounds that the agreement is not supported by consideration and that the suit is also barred by time.

The respondent/plaintiff filed a counter affidavit and contested the matter and ultimately the impugned order came to be passed on 26.06.2015 holding that the plaint need not be rejected and therefore, IA No.172 of 2015 was dismissed. Questioning the said dismissal of said IA, the present revision is filed.

This Court has heard Sri Lakshmi Kanth, learned counsel for the revision petitioners/defendants and Sri Nimmagadda Satyanarayana, learned counsel for the respondent/plaintiff.

The learned counsel for the revision petitioners did not actually argue on the issue of lack of consideration. The lower Court also rightly noticed that this is not a case of total lack of consideration but a case where a cheque was issued, but the same was not encashed. Therefore, the learned counsel essentially concentrated on the submission that the plaint is hopelessly barred by limitation. The learned counsel drew the attention of this Court to the affidavit filed in support of the application in IA No.172 of 2015 and the facts which are summarized in para-15 of the said affidavit. According to the counsel, the sale agreement is dated 15.11.2010 and the same was cancelled on 16.11.2010. The suit was filed on 25.11.2013. Therefore, the contention of the learned counsel is that the plaint is hopelessly barred by time. He relied upon the judgments of the Hon'ble Supreme Court reported in ***Hardesh Ores (P) Ltd., v. HEDE and Company***¹, ***Suresh Kumar Dagla v. Sarwan***². In addition, he points out that the third defendant, who is one of the purchasers of the property, should have been shown as a 'plaintiff'. He also points out that the prayer of the plaint is that the plaintiff seeks a decree against the defendants 1 and 2 and in favour of the plaintiff and the third

¹ (2007) 5 SCC 614

² (2014) 14 SCC 254

defendant. Therefore, it is the contention of the learned counsel that the suit is bad in law, since a proper and necessary party has not been added to the suit. He also relied upon the judgment reported in ***Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust***³ wherein the Hon'ble Supreme Court clearly held that the Court has to look into the averments of the plaint alone to decide the application under Order VII Rule 11 CPC and the Court can use its discretion at any stage to reject the plaint. The learned counsel submits that for these two reasons the plaint should have been rejected by the lower Court and therefore, the order impugned in this revision is incorrect.

In reply thereto, the learned counsel for the respondent/plaintiff argues that limitation is mixed question of fact and law, which has to be decided after full-fledged trial. The learned counsel submits that the time granted under the contract is 120 days. He drew the attention of this Court to Article 54 of the Limitation Act and states that the limitation will begin after the expiry of the time fixed or when the plaintiff had notice that the defendant was not willing to perform his part of

³ (2012) 8 SCC 706 = 2012 (5) SCJ 500

the agreement. It is argued that the cancellation of the agreement is wrong and that the period of 120 days is available for the fulfillment of the contract. In addition, the learned counsel also drew the attention of this Court to the plaint. In para-7, it is mentioned that the first defendant had conceded, that the agreement will be treated as alive, despite issuance of the notice. Further, in para-8 of the plaint, it is averred that the initial agreement is for an undivided extent of the property. The defendants came into the possession of the divided extent of the property with demarcated boundaries after the partition deed was entered on 06.02.2012 and in that partition only the plaint schedule property fell to the share of the defendants 1 and 2. It is also averred in para-8 that the plaintiff and the third defendant are in continuous contact with the defendants 1 and 2 who are promising to execute the sale deed after paying the balance sale consideration and ultimately, they have postponed the same. For all these reasons, he submits that the plaint is in time. He also states that in para-9 of the plaint, the reason was clearly mentioned as to why the third defendant is not added as a plaintiff.

This Court after hearing the submissions of both the learned counsel and after considering the case law on

the subject is of the opinion that the plaint can be rejected on the ground of limitation only if it is clearly barred by time. A reading of the plaint should make it clear that the plaint is barred by time. However, in the case on hand, after the notice dated 16.11.2010, the averments in the plaint are to the effect that defendants 1 and 2 agreed to treat the contract as to be alive. There are also averments in the plaint that the plaintiff and the third defendant were in touch with the defendants 1 and 2 to execute the sale deed. In addition to this, it is averred in the plaint that the in the partition deed, which was dated 06.12.2012, the half share of the defendants 1 and 2 is crystalized as 400 square yards. The cause of action para also mentions all of these facts. Therefore, after a reading of the plaint as it exists, this Court is of the opinion that there are mixed questions of fact and law that deserve to be considered in the trial only and the plaint cannot be rejected at this stage. Whether the averments in the plaint are true or not is a matter to be examined by the lower Court during trial. This Court is also of the opinion that the order under VII Rule 11 CPC will not come into play where a proper party is not added. As per the case law on the subject, if the plaint discloses some cause of action, the same cannot be rejected. This

Court concurs with the finding of the lower Court. The impugned order does not suffer from any infirmity warranting interference of this Court. There are no merits in the revision.

Accordingly, CRP No.5192 of 2015 is dismissed. The order dated 26.06.2015 in IA No.172 of 2015 in O.S.No.50 of 2014 passed by the XI Additional District Judge, Tenali is confirmed. In the circumstances of the case, there shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this revision, shall stand closed.

Date: 08.10.2018
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D.V.S.S. SOMAYAJULU, J

