

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION NO. 5410 OF 2017

ORDER:

Heard Sri M.P. Chandramouli, learned counsel for petitioners and Sri Veera Reddy, learned Senior Counsel appearing for Sri V. Nitesh, counsel for respondents 1 & 2.

2. The Civil Revision Petition is filed assailing the order dated 15.9.2017 in I.A.No. 1097 of 2017 in O.S.No. 108 of 2011, on the file of Principal Junior Civil Judge, Puttur.

3. The admitted facts are that the first respondent filed the suit only for permanent injunction against the petitioners/defendants and that subsequently her son, the second respondent got impleaded as plaintiff on the basis of the registered gift settlement deed dated 13.4.2017 executed by the first respondent in his favour.

4. It is also not in dispute that there after, he filed I.A. No. 1097 of 2017 seeking relief of declaration of title of the respondents to the plaint schedule property in addition to the relief of perpetual injunction sought earlier by the first respondent.

5. In the affidavit filed in support of the said application, it is stated that in the body of the contents, the first respondent sought for declaration of title but did not pay Court fee therein, and did not mention relief of declaration by oversight and that he is entitled to amend the pleadings and seek the said relief.

6. Counter affidavit was filed by the petitioners/defendants to the said application opposing the amendment of the plaint by the respondents. A specific plea was raised in the counter affidavit that the relief of declaration cannot be sought in 2017 in a suit filed in 2011 and that it was not sought within the time prescribed by law and the said relief is barred by limitation.

7. It is also not in dispute that the trial in the suit has not yet commenced.

8. The Court below by order dated 15.9.2017 allowed I.A.No. 1097 of 2017 taking view that the amendment is necessary, that there were no admissions, and it also does not change the cause of action. It did not advert to the contention of the petitioners that the proposed amendment is barred by limitation.

9. Assailing the same, the Revision is filed.

10. Counsel for petitioners contended that when a specific plea of bar of limitation is raised in the Court below, the Court below ought to have adverted to it and considered it and without doing so, it could not have allowed the application for amendment of plaint.

11. Counsel for respondent did not dispute the fact that the plea of bar of limitation was specifically raised in the counter affidavit of the petitioners and was also argued before the Court below, but no finding was given by the Court below in the impugned order.

12. Having regard to the stand taken by the respective parties, I deem it appropriate to direct the Court below to frame issues on the questions as to (i) “whether the respondents/plaintiffs are entitled to the relief of declaration of title, (ii) whether such relief is barred by limitation and also (iii) whether in the facts and circumstances, having regard to the delay in filing the said application of six years from the date of filing of the suit, whether the said amendment would relate back to the date of filing of the suit, or whether it would operate from the date when it was allowed on 15.9.2017?”.

13. The Civil Revision Petition is disposed of accordingly by permitting the petitioners to file an additional written statement to the amended plaint raising all the pleas available to them in law including the plea of bar of limitation; then the Court below shall frame the issues as aforesaid in addition to the issues already framed or other issues which it may deem fit to frame depending on the pleading in the additional written statement; the parties shall be entitled to lead evidence of all the issues framed; and then the Court below shall decide the suit in accordance with law. There shall be no order as to costs.

14. As a sequel thereto, miscellaneous petitions, pending if any, shall stand dismissed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 02.02.2018
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