

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION No. 5035 of 2017

ORDER:

This civil revision petition is filed against the order dated 20.04.2017 in G.R.No.676 of 2017 in un-numbered suit O.S.No.____ of 2017, on the file of District Judge, Srikakulam (for short, 'the trial Court').

2. Heard Sri Tarlada Rajasekhar Rao, learned counsel for the revision petitioner. The learned counsel for the revision petitioner had taken notice to the respondent but the respondent had refused to receive the notice and, therefore, it was returned back to the sender. Considering that the service is held sufficient, arguments of the learned counsel for the revision petitioner are heard in this matter.

3. The revision petitioner/plaintiff filed the suit before the trial Court for declaration of title and recovery of possession basing on the execution of oral mortgage. The case of the revision petitioner is that the trial Court has taken an objection with regard to the limitation in filing the suit. In paragraph 3 of the impugned order, the trial Court has observed as under:

"In this suit, the limitation for suit relating to immovable property by a mortgagor – to redeem or recover possession of immovable property mortgaged under Article 61 of Limitation Act, 1963 is 30 years. Suit for declaration in respect of any immovable property under Article 64 and recovery of possession under Article 65 is also 12 years. The limitation period will begin under Article 65 is when the possession of the defendant becomes adverse to the plaintiff. As per Article 61, the limitation will start when the right to redeem or to recover possession accrues."

4. It is further stated that the plaintiff's father has pledged the schedule property to the father of the defendant before his death i.e., before 1978. The trial Court has taken into consideration the

provision under Article 65 of the Limitation Act, and came to the conclusion that the possession of defendant becomes adverse to the plaintiff and, therefore, the limitation period will run from the date the possession becomes adverse to the plaintiff. It is further observed that even as per the plaint averments, he is having knowledge that his father has not repaid the loan amount of Rs.3,000/- to the father of the defendant during his lifetime, as it was a time barred debt. He made several attempts for recovery. The trial Court went on the premise that the plaintiff has filed a suit with a plea of adverse possession and rejected the plaint vide G.R. No.676 dated 01.02.2017, vide the impugned order dated 20.04.2017.

5. Learned counsel for the revision petitioner submits that in the light of the decisions reported in **C. Natrajan v. Ashim Bai and another**¹, the applicability of one or the other provision of the Limitation Act per se cannot be decisive for the purpose of determining the question as to whether the suit is barred under one or the other article contained in the schedule appended to the Limitation Act.

6. Learned counsel for the revision petitioner further submits that the aspect of limitation is a mixed question of fact and law that can be decided only during trial and, therefore, the trial Court cannot come to a conclusion based on the provision of Limitation Act, and reject the plaint under Order VII Rule 11 (d) of Code of Civil Procedure.

7. Learned counsel placed reliance on the order dated 18.09.2015 passed by this Court in Civil Revision Petition No.3859 of 2015, wherein it was observed as under:

¹ (2007) 14 Supreme Court Cases 183

“As regards sub-Rule (d) of Rule 11 of Order VII of the CPC, the plaint is liable to be rejected, if the same is barred by any law. The lower Court has rejected the plaint by holding that the suit is barred by limitation. The limitation being a mixed question of fact and law, it is not desirable to reject the plaint at pre-numbering stage and it is appropriate to consider this aspect after the suit is numbered and both sides are heard. Therefore, the lower Court ought not to have taken up upon itself the task of deciding whether the suit is barred by limitation or not even before the suit is numbered.”

8. In view of the facts of the case, and in view of the foregoing decisions, it is obvious that the Court of first instance cannot reject the plaint only on the ground of limitation as the question of limitation is a mixed question of fact and law.

9. In the result, the civil revision petition is allowed, setting aside the order dated 20.04.2017 passed by the trial Court in G.R.No.676 in the un-numbered suit O.S. No.____ of 2017. The trial Court is directed to number the suit and consider the aspect of limitation after adducing evidence by both the parties, in accordance with law. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

14th February, 2018

Note: C.C. tomorrow.

B/o
KSM

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B/o

KSM