

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.1800 OF 2013

ORDER:

The present Civil Revision Petition, under Article 227 of the Constitution of India, is directed against the order dated 05.03.2013 in I.A. No.309 of 2012 in O.S. No.163 of 2008 passed by the learned Principal Junior Civil Judge, Puttur, dismissing the petition filed under Order - I Rule 10(2) and Section 151 of the Code of Civil Procedure, 1908, requesting to add the proposed party, respondent No.3 herein, viz., K. Jayaprada, as defendant No.3 in the suit.

2. Heard Sri P.V. Vidyasagar, learned counsel for the petitioner, and perused the material on record including the order under revision.

3. The ground on which, such a request was made by the revision petitioner - plaintiff was that respondent Nos.1 and 2, who are defendant Nos.1 and 2, executed an agreement of sale dated 31.03.1994 in her favour. Later, according to the revision petitioner, respondent No.2, in order to create problems, nominally executed a sale deed in favour of his daughter, K. Jayaprada, who is the proposed party, vide document No.2043 of 2008 concerning the suit property and the said fact was learnt by her only after filing the written statement. Having no other option, she filed the present application.

4. Respondent No.2 resisted it by filing a counter. While denying the agreement of sale put forth by the revision petitioner, he would state that since her daughter is depending upon him, to create some property for her future and towards *pasupu kumkuma*, he executed a gift settlement deed in her favour on 28.05.2008 delivering possession thereafter and the same is in possession and enjoyment of his daughter. It is also contended that after a lapse of three (3) years, the present application was filed, and, therefore, the same is hit by Rule 28 of Civil Rules of Practice, and, there is no reason to allow the application.

5. The learned trial Judge, having formulated relevant points for consideration, observing that though, the written statement was filed on 25.11.2008, the petitioner filed the present application under Order - I Rule 10(2) and Section 151 of CPC only on 12.03.2012, and, thus, after a lapse of three (3) years, such an application was filed, though, he learnt about execution of settlement deed on 28.05.2008 itself, and, thus, dismissed the application. That has been the reason assigned by the learned trial Judge in dismissing the application.

6. The learned counsel for the revision petitioner would submit that the Court went wrong in holding that filing of the application under Order - I Rule 10(2) of CPC after a lapse of three (3) years is barred by limitation. According to him, proposed party was aware of the suit agreement, and, therefore, presence of the proposed respondent is essential for determination of the matter in dispute.

7. No representation for the respondents.

8. Now the short question that arises for consideration is whether the proposed respondent is a necessary party?

9. So far as limitation aspect is concerned, it would be dealt with a little later.

10. The stand taken by respondent Nos.1 and 2 is that no such agreement of sale was executed in favour of the petitioner herein. Relevant issues must have been settled for trial. In case, the trial Court arrives at the conclusion that the agreement for sale is a genuine document and the transaction thereunder is enforceable, then an effective decree cannot be passed for the reason, the title is conveyed to the proposed party by way of alienation in the form of gift settlement deed in her favour by respondent No.2 and respondent No.3, by virtue of gift settlement deed, holds the suit property as a trustee, and, therefore, she is a necessary party to the suit proceedings. This particular aspect was not taken note of by the learned trial Judge.

11. Concerning bar by limitation, though, the claim is not for cancellation of the gift settlement deed made by the revision petitioner as plaintiff, a relevant issue can be settled for trial so far as right of the proposed party is concerned and can be decided including the limitation aspect.

12. Therefore, the order passed by the learned trial Judge is liable to be set aside, and, accordingly, set aside allowing the present Civil Revision Petition. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the present revision petition stand closed.

A. SHANKAR NARAYANA, J

March 22, 2018.

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