

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.214 of 2019

ORDER:

This Revision is filed assailing the order dt.10.10.2018 in I.A.No.333 of 2018 in O.S.No.163 of 2018 of the XI Junior Civil Judge, City Civil Court, Secunderabad.

2. Petitioner herein is the defendant in the above suit.

3. Respondent herein filed the said suit to declare that the Rectification Deed dt.28.11.1998 covered by Registered Document No.1933/2002 of the Sub-Registrar, Maredpally, Secunderabad, unilaterally executed by the petitioner is sham, bogus and not binding on him; to cancel the same, and for recovery of possession of the property covered by Settlement Deed dt.04.02.1998.

4. Earlier, it appears that the respondent filed O.S.No.464 of 2003 before the III Additional Senior Civil Judge, City Civil Court, Secunderabad for similar relief but the said suit was dismissed for non-prosecution on 23.03.2009 and now with the same prayer, the respondent filed the instant case O.S.No.163 of 2018.

5. Petitioner filed I.A.No.333 of 2018 under Order VII Rule 11(d)CPC to reject the plaint at the threshold contending that the said suit is barred by law, that the cause of action pleaded therein is false, and that the respondent had stated in the plaint that when the earlier suit was dismissed for non-prosecution, he did not file application for restoration since he was of the opinion that being a family member, he should not indulge in Court litigation.

6. Reliance was placed on Order IX Rule 9 CPC and Order XXIII Rule 1 CPC.

7. Respondent/plaintiff filed a counter affidavit denying the averments made in the affidavit filed in support of I.A.No.333 of 2018 and contended that the suit is not barred by limitation, that there was no suppression of facts and the present cause of action is different from the cause of action in 2003. He pointed out that he was the younger brother of the petitioner, that there was a Registered Settlement Deed dt.04.02.1998 executed in his favour and he was also put in possession of 100 sq. yards of land by the petitioner, but later without his consent and knowledge, petitioner had unilaterally executed a Rectification Deed dt.28.11.1998 which was registered as Document No.1933/2002 reducing the extent of land from 150 sq.yards to 115 sq.yards; that he came to know about the same in October, 2002 and started disputing the same. He contended that the petitioner had then sold the land to 2nd defendant, that the 2nd defendant is not a party to the earlier suit and so the cause of action for the instant suit is different from the earlier one. He also contended that the provisions of law quoted by the petitioner are not attracted and that the application itself was filed with an ulterior motive.

8. By order dt.10.10.2018 the Court below dismissed I.A.No.333 of 2018. It observed that the earlier suit was dismissed for default and there was no adjudication on merits and the petitioner cannot take advantage of the dismissal of the suit for non-prosecution at this stage. It also observed that there is no presumption to be

drawn in respect of the cause of action indicated in the suit O.S.No163 of 2018, that the suit is pending at the stage of filing of Written Statement by the petitioner and 2nd defendant, and all the objections available to the petitioner can always be raised in the Written Statement, on which issues can be settled and adjudicated. It opined that without going into the merits and demerits of the case, rejection of the plaint at the very threshold is improper and unwarranted.

9. Assailing the same, this Revision is filed.

10. Though counsel for petitioner sought to contend that the Court below ought to have accepted the contentions of the petitioner in rejecting the plaint and its failure to do so, has caused grave prejudice to him, I am unable to agree with the said contentions.

11. Under Order IX Rule 4 CPC when the suit is dismissed for non-prosecution, the plaintiff is entitled to file a fresh suit or he can apply for an order to set the dismissal aside. Therefore, it cannot be said that O.S.No.163 of 2018 could not have been filed by the respondent after dismissal of the suit O.S.No.464 of 2003 for non-prosecution.

12. No doubt, the issue of limitation may arise but before the Written Statement is filed, such issue, which may be a mixed question of law and fact, cannot be decided at the threshold and respondent cannot be denied an opportunity to seek relief in the suit on the said basis.

13. Therefore, I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

14. Accordingly, this Civil Revision Petition fails and it is dismissed at the admission stage. No order as to costs.

15. Consequently, Miscellaneous petitions pending if any shall stand dismissed.

05th February, 2019.
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M.S. RAMACHANDRA RAO, J

