

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.645 of 2019

ORDER:

This Revision is filed challenging the order dated 05.02.2019 in I.A.No.130 of 2018 in O.S.No.46 of 2008 on the file of the Senior Civil Judge, Medak.

2. Petitioners herein are defendant Nos.10,14 and 16 to 18 in the said suit.

3. Respondent No.1/plaintiff filed the said suit for partition of the plaint schedule properties and for allotment of 1/13th share to respondent No.1, to declare the registered G.P.A. dt.03.03.1986 as null and void, for perpetual injunction and cancellation of registered sale deeds dt.02.02.2009 and 02.02.1989.

4. It is the case of the plaintiff that he along with respondent Nos.1 to 9 and others purchased jointly agricultural land of a large extent under a registered sale deed dt.28.10.1980 which was rectified vide rectification deed dt.13.10.1988, that there was mutation also in the revenue records on his name along with that of respondent Nos.1 to 9 and others between 1984-85 till 1987-1988, that there was no demarcation and his share would be 1/13th and he is entitled to the said share.

5. He also contended that his signature was forged on the registered G.P.A. dt.03.03.1986 by one Rendlagudem Sailu, who sold the land to defendant Nos.10 to 14 under five different sale deeds, that he was not aware of the said transaction and he is also entitled to challenge the said transaction as well as subsequent sale deeds executed on the basis of the said G.P.A. to others.

6. Defendant Nos.10, 14, 16 to 18 filed I.A.No.130 of 2018 to reject the plaint raising several contentions including a contention that having regard to the pleading in the plaint that the name of the 1st respondent was not reflected in the Revenue records after 1987-88, he is deemed to be out of physical possession since then till the filing of the suit in 2008 i.e. for 19 years and so the suit is barred by limitation.

7. Counter-affidavit was filed by 1st respondent opposing the said claim and contending that the suit is an identified suit of the year 2008 and instead of proceeding with the suit, the petitioners are trying to delay the disposal of the suit by raising these frivolous contentions.

8. By order dt.05.02.2019, the Court below dismissed I.A.No.130 of 2018 observing that the petitioners herein had already filed written statement and they had not taken any plea in the written statement that there is neither cause of action nor bar of limitation for the suit, and for the first time they have filed

I.A.No.130 of 2018 to reject the plaint on these two grounds. It noted that the pleadings have been filed and four issues had been framed on 06-09-2011. It observed that only after full fledged trial and after allowing oral and documentary evidence, the issues as to whether the suit is within the limitation or not, can be decided as well as other two issues relating to whether the signatures of 1st respondent are forged or not and whether there is cause of action to maintain the suit.

9. Challenging the same, this Revision is filed.

10. Though learned counsel for petitioners sought to contend that the order passed by the Court below is unsustainable and it ought to be rejected, I am unable to agree with the said contention since according to the 1st respondent/plaintiff, he along with defendant Nos.1 to 9 and others are the co-owners of the suit schedule property and though he never executed G.P.A.No.138 of 1986 in favour of Sailu, the land had been sold on the basis of the said registered G.P.A. in favour of defendant Nos.10 to 14.

11. No doubt, there was also mention in the plaint that after 1987-88, the names of the petitioner and defendant Nos.1 to 9 and others are not reflected, but that cannot be a ground to reject the plaint because if petitioners' case that they along with defendant Nos.1 to 9 and others are co-owners, unless ouster of the petitioners is made out by any clinching evidence, the suit for partition cannot

be said to be barred by limitation. In any event, without having raised the plea of bar of limitation in the written statement, it is not known how the petitioners had come up with I.A.No.130 of 2018 raising the said plea. Obviously, the petitioners wish to delay the disposal of the old suit of 2008 by filing application of this nature instead of getting ready for disposal of the suit.

12. Therefore, I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court with the order dt.05-02-2019 in I.A.No.130 of 2018 in O.S.No.46 of 2008 of the Senior Civil Judge at Medak.

13. Accordingly, the Civil Revision Petition fails and it is dismissed at the stage of admission. No costs.

14. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 09-04-2019

Vhb/Vsv