

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.1102 of 2015

ORDER :

This Civil Revision Petition is filed by the petitioners herein challenging the order dt.27.01.2015 passed in I.A.No.46 of 2012 in O.S.No.56 of 2009 on the file of Senior Civil Judge, Zaheerabad.

2. The petitioners herein are defendants in the above suit.
3. The respondent filed the suit against the petitioners for declaration of title, perpetual injunction and cancellation of a registered sale deed dt.16.12.1977.
4. The petitioners / defendants filed written statement denying the suit claim, and contended that the respondent had earlier filed O.S.No.26 of 2001 on the file of Junior Civil Judge, Narayankhed to declare the registered sale deed dt.16.12.1977 as invalid and for cancellation of the same, and it was dismissed on 12.04.2006 after trial; thereafter, the judgment in O.S.No.26 of 2001 was challenged by the respondent in A.S.No.33 of 2006 before the Special Judge for Trial of Offences under S.C. / S.T. (Prevention of Atrocities) Act-cum-Additional District and Sessions Judge, Medak at Sangareddy District, and the said appeal was also dismissed on 05.07.2007; and S.A.No.774 of 2007 filed against decision in A.S.No.33 of 2006 was dismissed by this Court on 05.10.2007; and the respondent herein cannot be allowed to re-agitate the same issue again.

5. One of the issues framed in the suit O.S.No.56 of 2009 (out of the eight issues framed), is “*whether the suit O.S.No.56 of 2009 is barred by the principle of res judicata*”.

6. The petitioners filed I.A.No.46 of 2012 invoking Order XIV Rule 2(2)(b) read with Section 151 of Civil Procedure Code, 1908, praying the Court below to decide the above issue as a preliminary issue before proceeding for trial with the suit.

7. The said contention was opposed by the respondent, contending that the application itself is not maintainable. It was contended that there was an inherent defect in framing O.S.No.26 of 2001, and so the judgment therein will not operate as *res judicata*. It was further contended that the issue of *res judicata* is not merely a question of law but is a mixed question of fact and law; and for decision on the said issue, recording of oral evidence and receipt of documentary evidence is necessary.

8. By order dt.27.01.2015, the Court below rejected I.A.No.46 of 2012. It held that petitioners did not file the right material to establish that the suit O.S.No.56 of 2009 is hit by the doctrine of *res judicata* or that this issue has to be decided purely as an issue of law; that the trial was unduly held up because of filing of this application; and petitioners would also get an opportunity to lead evidence and establish their contention during trial.

9. Assailing the same, the present Civil Revision Petition is filed.

10. The counsel for petitioners sought to reiterate the contentions raised in the Court below that the suit O.S.No.56 of 2009 is barred by the decision in O.S.No.26 of 2001; and that the issue of such bar has got to be decided as preliminary issue.

11. Admittedly, the suit is of the year 2009 and more than ten years have elapsed since the filing of the suit. Though stay was initially granted in favour of petitioners on 26.03.2015 for four weeks, the same has not been extended thereafter.

12. Normally issues relating to jurisdiction of the Court or maintainability of the suit are taken up as preliminary issue, but issues such as the one in question, i.e., whether the suit O.S.No.56 of 2009 is barred by the principle of *res judicata* in view of the earlier judgment in O.S.No.26 of 2001, would require going through the pleadings, contentions and decision rendered in the earlier suit O.S.No.26 of 2001 as well as referring to the pleadings in the instant suit O.S.No.56 of 2009, since the applicability of principle of *res judicata* would depend upon consideration of the same. So such issue cannot be decided as a preliminary issue.

13. In this view of the matter, I am not inclined to interfere with the order passed by the Court below.

14. Accordingly, the Civil Revision Petition is disposed of directing the Court below to decide the said issue along with other issues in the

suit as expeditiously as possible and dispose of the said suit within four (04) months from the date of receipt of copy of this order.

15. It is made clear that this Court has not expressed any opinion on the correctness or otherwise of the contentions of petitioners.

16. No order as to costs.

17. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 30.01.2019

Ndr/*