

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.1440 of 2019

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.15-04-2019 in I.A.No.296 of 2018 in O.S.No.17 of 2018 of the Senior Civil Judge at Kamareddy.

2. Petitioners herein are defendant Nos.1 and 2 in the said suit.
3. The 1st respondent/plaintiff filed the said suit against petitioners and 2nd respondent for declaration of his title to the plaint schedule property, for decree of cancellation of a deed of gift settlement dt.06-01-2003 and consequential injunction.
4. He alleged in the plaint that the gift settlement deed is a false and bogus document created by petitioners and petitioners have no right or title over the suit schedule property.
5. Written statement was filed by petitioners opposing the suit claim. One of the contentions raised in the written statement is that the document dt.06-01-2003 was executed by the father of 1st respondent/plaintiff in favour of 1st petitioner and 2nd respondent; that 1st respondent was aware of the execution of said document by his father and he has intentionally filed the suit 15 years after the said document was executed, and the suit is barred under Article 59 of the Limitation Act, 1963 (for short 'the Act').

6. Thereafter petitioners filed I.A.No.296 of 2018 to reject the plaint on the ground that there is no cause of action and the suit is barred by limitation also, since the 1st respondent/plaintiff did not file the suit seeking the relief of cancellation of gift deed dt.06-01-2003 within the period of limitation prescribed under Article 59 of the Act.

7. Counter-affidavit was filed by 1st respondent/plaintiff opposing the said contention. He stated that he did not know the execution of the said document at all and that he had come to knowledge about it recently and then filed the suit. He stated that these are matters to be gone into at the time of trial and not at the preliminary stage.

8. By order dt.15-04-2019, the Court below dismissed the said application. It referred to Article 59 of the Act and stated that since 1st respondent/plaintiff averred that he came to know about the existence of gift settlement deed dt.06-01-2003 only on 05-03-2018, and since only averments made in the plaint are relevant, and the case of the petitioners/defendants cannot be considered, no relief can be granted in the said application to petitioner Nos.1 and 2.

9. Challenging the same, this Revision is filed.

10. Learned counsel for petitioners sought to contend that there is material to show that 1st respondent/plaintiff was aware of the said gift deed in view of the statement made by him in written statement filed in O.S.No.129 of 2012, but this document cannot be considered in deciding an application under Order VII Rule 11 C.P.C. because the

defence of the defendants cannot be gone into while considering the application for rejection of plaint, and only the contents of the plaint and the documents filed along with the plaint can be looked into.

11. In view of the said legal position, I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court in exercise of its power under Article 227 of the Constitution of India.

12. Therefore, the Civil Revision fails and it is accordingly dismissed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 22-08-2019

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