

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Civil Revision Petition No.2126 of 2019

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioners/defendants, challenging the docket order, dated 18.03.2019, passed in I.A.No.760 of 2018 in O.S.No.1817 of 2018 by the I Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, Hyderabad, whereby, the petition filed by the petitioners/defendants under Order VII Rule 11 read with Section 151 of C.P.C, praying the Court below to reject the plaint in O.S.No.1817 of 2018, was dismissed.

2. Heard the learned counsel for the petitioners/defendants and perused the record.

3. The learned counsel for the revision petitioners/defendants would contend that the agreement of sale-cum-General Power of Attorney in Document No.2434 of 2002, dated 10.04.2002, was executed by the 1st respondent/1st plaintiff in the year 2002. Thereafter, two acres of land was alienated in favour of the third parties and only two acres was only left. Suppressing the material facts, the present suit is filed by the plaintiffs for cancellation of agreement of sale-cum-General Power of Attorney in Document No.2434 of 2002, dated 10.04.2002, and for perpetual injunction restraining the revision petitioners/defendants from alienating, encumbering or creating any charge over the suit schedule property. As per Article 59 of the Limitation Act, 1963, a suit to

cancel or set aside an instrument/document has to be filed within three years from the date of execution of such instrument/document. Since the document in question was executed in the year 2002 and the subject suit is filed in the year 2018, it is barred by limitation. The reasons assigned by the Court below while dismissing the petition to reject the plaint in the subject suit are contrary to the settled legal principles. Though the subject agreement of sale-cum-General Power of Attorney in Document No.2434 of 2002, dated 10.04.2002, was executed in respect of four acres of land, however, the present suit is filed only in respect of two acres of land and ultimately prayed to set aside the order under challenge and reject the plaint in O.S.No.1817 of 2018 as prayed for. In support of his contentions, the learned counsel had relied upon a judgment of the Apex Court in Raghwendra Sharan Singh v. Ram Prasanna Singh (Dead) by Lrs¹.

4. There is specific mention in the plaint that the agreement of sale-cum-General Power of Attorney in Document No.2434 of 2002, dated 10.04.2002, was fraudulently obtained by the revision petitioners/defendants, without paying any sale consideration and by taking advantage of the 1st respondent/1st plaintiff's innocence and illiteracy. In the averments of the plaint, it is mentioned that the cause of action to file the suit has arisen on the date of execution of the subject agreement of sale-cum-General Power of Attorney in Document No.2434 of 2002, dated 10.04.2002, and on the death of the husband of the 1st petitioner/1st defendant by

¹ AIR 2019 Supreme Court 1430

name A.Bala Chander and on all subsequent dates when the revision petitioners/defendants fraudulently made efforts to sell the suit land. It is also stated in the plaint that finally, when the suit notice, dated 11.06.2018, was issued to the revision petitioners/defendants, they did not reply for the same.

5. As per Order VII Rule 11 of C.P.C., the averments of the plaint alone are required to be taken into consideration as to whether the plaint discloses the cause of action or not. There is specific mention in the plaint that in the month of June, 2018, for the first time, the 1st petitioner/1st defendant came to the suit schedule property claiming rights and also on subsequent dates such claims are made. Whether the suit is barred by limitation is a mixed question of fact and law. It can only be answered after full-fledged trial of the suit. It is also contended that though two acres of land was sold by defendant No.5-M.Ashok Reddy, the plaintiff No.1 had not assailed the same in the subject suit. For that, the plaintiff No.1 has given an explanation that the said sale was made to the defendant No.5 at the instance of plaintiff No.1 only. Further, the defendant No.5-M.Ashok Reddy has cleared the said two acres of land by converting the same into plots and sold the same to the third parties along with son of the plaintiff No.1 and that the son of the plaintiff No.1 has signed as witness confirming the transfers. Further, the plaintiff No.1 had received the sale proceeds in respect of two acres of land sold by defendant No.5-M.Ashok Reddy. Under these circumstances, it cannot be construed that the suit is not within the period of limitation.

6. In Raghwendra Sharan Singh's case *supra*, the question that had fallen for consideration by the Apex Court was with regard to cancellation of Gift Deed executed and registered 22 years prior to the filing of the suit. The Apex Court held that the suit is barred by limitation under Article 59 of the Limitation Act, 1963. In the instant case, though the agreement of sale-cum-General Power of Attorney in Document No.2434 of 2002, dated 10.04.2002, was executed in the year 2002, the plaintiffs are continuously agitating the execution of the sale deed on receipt of sale consideration and asserting different dates of cause of action as indicated above. Hence, the aforementioned decision of the Apex Court is distinguishable on facts and the said decision has no application to the facts and circumstances of the case on hand.

7. The Court below had elaborately dealt with all the contentions raised on behalf of the revision petitioners/defendants and ultimately negated the same, assigning several reasons. No impropriety or illegality is found in the impugned order. The Court below is justified in passing the impugned order. The Civil Revision Petition is devoid of merit and is liable to be dismissed.

8. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

Dr. SHAMEEM AKTHER, J

19th September, 2019
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