

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.6474 of 2017

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dt.13.09.2017 passed in I.A.No.106 of 2017 in O.S.No.106 of 2016 on the file of I Additional Chief Judge, City Civil Court, Secunderabad.

2. The petitioner herein is defendant in the suit.
3. The respondent / plaintiff filed the said suit against the petitioner invoking Section 6 of the Specific Relief Act, 1963 and contending in para no.11 that on or after 20.05.2016 he was dispossessed forcibly by petitioner. The suit was filed on 17.08.2016.
4. The petitioner filed I.A.No.106 of 2017 under Order VII Rule 11 of Civil Procedure Code, 1908 to reject the plaint on the ground that appropriate Court Fee had not been paid and also on the ground that the plaint did not disclose any cause of action.
5. Reference in the said application was made to para no.12 of the plaint where the respondent had referred to a complaint dt.21.10.2015 lodged with the local police and which was referred to as document No.14, and it is contended that in the said complaint, the respondent had admitted that petitioner's people had occupied his property and requested the Police to ask them to move away from his land. It is contended that this amounts to an admission of alleged dispossession

of the respondent even by the date of the said complaint, i.e., 21.10.2015; and therefore, the suit filed under Section 6 of the Specific Relief Act on 17.08.2016 would be beyond the period of six (06) months stipulated under Law, and so, the plaint should be rejected.

6. Counter-affidavit was filed by the respondent opposing the said application and contending that the suit is not barred by limitation. It is pointed out that it is a matter for evidence as to when the respondent was in fact dispossessed, and no order can be passed in the application under Order VII Rule 11 of Civil Procedure Code, 1908. It was reiterated that the suit was filed within time, and the application is filed only to delay the disposal of the suit.

7. By Order dt.13.09.2017, the Court below rejected the said application.

8. It observed that as limitation is a mixed question of fact and law and that an issue has to be framed in that regard and ought to be decided after conclusion of the trial and at the time of passing of the judgment. It also dealt with the second contention of the petitioner that there was no cause of action for the respondent to file the suit and held that after reading the plaint, there is a sufficient cause of action for filing the suit, and that it was not a fit case to reject the plaint at the threshold.

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

10. Heard the Counsel for petitioner, and Sri V. Hari Haran, counsel for respondent.

11. The counsel for petitioner reiterated the contentions raised by the petitioner in the Court below that the suit is barred by limitation in view of Document No.14 filed along with the plaint by the respondent, that the alleged dispossession of the respondent by the petitioner took place even by 21.10.2015 and so the suit under Section 6 of the Specific Relief Act filed on 17.08.2016 is barred by limitation.

12. It is to be noted that in I.A.No.106 of 2017 filed by petitioner, in fact, the petitioner did not contend that the suit is barred by limitation and only took the plea that the Court Fee paid was not proper and that the plaint did not disclose the cause of action. Though in the body of the application there is a reference to the said contention, as already held by the Court below, it is a matter for trial, and an issue in that regard has to be framed and decided by the Court below since the issue of limitation is a mixed question of Law and fact.

13. Also, on a reading of the plaint, it does disclose a cause of action, and so the contention of petitioner that there is no cause of action to file the suit cannot be accepted.

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

15. Accordingly, the Civil Revision Petition fails and it is dismissed. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 19.02.2019

Ndr/*

