

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.1688 OF 2019

ORDER:

This revision petition, under Article 227 of the Constitution of India, is filed by the petitioner/defendant aggrieved by the order dated 20.02.2019 passed in I.A.No.887 of 2016 in O.S.No.79 of 2016 by the Senior Civil Judge at Gadwal, whereby the application filed by the revision petitioner/defendant under Order VII Rule 11(a) and (d) of CPC to reject the plaint was dismissed.

2. Heard the learned counsel for both sides and perused the record.

3. Learned counsel for the revision petitioner/defendant would contend that the suit in O.S.No.79 of 2016 is filed for declaration of title, possession and to declare the disputed will as created and fake. It is also contended that there is already a decree in O.S.No.28 of 2000 against the respondent/plaintiff obtained by the revision petitioner for perpetual injunction, which is still subsisting. The subject suit is filed beyond the period of limitation inventing false cause of action in the plaint to get the suit within limitation. Therefore, the Court below ought to have rejected the plaint under Order VII Rule 11(a) and (d) of CPC. In support of his contention, learned counsel has relied upon the decision reported in *Raghwendra Sharan Singh v. Ram Prasanna Singh (dead) by LRs*<sup>1</sup> and ultimately, prayed to allow the revision petition as prayed for.

4. On the other hand, learned counsel for the respondent/plaintiff would contend that having come to know the entries made in favour of the revision petitioner/defendant and on a memo given by the revenue

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<sup>1</sup> 2019(3) ALD 177(SC)

authorities, to seek appropriate remedy by competent civil Court, immediately, the present suit was filed for declaration and possession and to declare the disputed will as fake. The limitation is a question of fact and it is required to be adjudicated after due trial of the suit. The Court below is justified in dismissing the subject Interlocutory Application and prayed to sustain the impugned order.

5. In view of the submissions made by both sides, the point that arises for determination is:

*“Whether the plaint in O.S.No.79 of 2016 on the file of Senior Civil Judge at Gadwal, is liable to be rejected?”*

6. As seen from the material placed on record, the subject disputed document i.e., will is an unregistered document. Furthermore, the respondent/plaintiff contended that it is fake and created document. Having come to know the wrong entries made pursuant to the said will, the respondent/plaintiff immediately filed the suit for declaration, possession and to declare the will as fake one. As seen from the plaint pleadings, the question raised with regard to the limitation is a question of fact and law. Whether the suit is barred by limitation or not can be adjudicated only after due trial of the suit.

7. In *Raghwendra Sharan Singh's* case (supra), the Hon'ble Apex Court observed that admittedly, the original plaintiff along with his brother executed a registered gift deed. Thereafter, the plaintiff contended that the gift deed was a showy deed of gift and therefore, the same was not binding on him. For approximately 22 years, neither the plaintiff nor his brother (who died on 15.12.2002) claimed at any point of time that the gift deed was showy deed of gift. Having

considered the totality of the circumstances, the plaint was rejected exercising the power under Order VII Rule 11 of CPC. But in the instant case, both parties are differently placed. Having examined the contentions of both the parties, the Court below was pleased to dismiss the subject Interlocutory Application. The respondent herein/ plaintiff approached the revenue authorities in the year 2013 and thereafter, he filed the subject suit. The aspect of limitation is a question of fact and law. This Court is also in agreement with the said findings. There are no legal infirmities to take a different view and allow the revision petition as prayed for. Under these circumstances, the civil revision petition is liable to be dismissed.

8. In the result, the Civil Revision Petition is dismissed.

The Miscellaneous Petitions, if any, pending shall stand closed.

No costs.

Date: 21.01.2020  
ssp

Dr. SHAMEEM AKTHER, J