

HON'BLE SRI JUSTICE RAO RAGHUNANDAN RAO

CIVIL REVISION PETITION No.1972 of 2023

ORDER:-

The petitioners herein are defendants in O.S.No.30 of 2015 filed by the respondents herein for declaration that they are the owners of the suit schedule property and for a permanent injunction restraining the petitioners herein from interfering with the peaceful possession and enjoyment of the plaint B to E schedule property by the respondents.

2. It is an admitted fact that both sides had purchased the plaint schedule property from the plaintiffs and defendants in O.S.No.104 of 2003 on the file of the Learned Additional Senior Civil Judge, Tirupati. The petitioners herein, contending that the title of the vendors of the respondents had already been denied in O.S.No.104 of 2003, had sought framing of an issue as to whether the suit was barred by limitation, in view of Article 58 of the Schedule to the Limitation Act, 1908.

3. This application was initially rejected by the Trial Court and the petitioners had approached this Court by way of C.R.P.No.4750 of 2015 which was allowed with a direction to the Trial Court to frame an issue on the question limitation.

4. The Trial Court, in pursuance of the said directions, had framed an issue as to whether the suit was barred by the law of limitation.

5. At that stage, the petitioners moved an application bearing I.A.No.229 of 2023 in O.S.No.30 of 2015 under Order XIV Rule (2) (2) (B) r/w Rule 6 & 7 of Civil Procedure Code for treating the additional issue relating to the limitation as a preliminary issue.

6. This application was rejected by the Trial Court by an order dated 24.07.2023 against which the petitioners have now approached this Court by way of the present Civil Revision Petition.

7. Heard Sri G. Ramesh Babu, learned counsel for petitioners and Sri Harinath Reddy Soma, learned counsel for respondents.

8. The learned counsel for the petitioners would submit that the order passed by the Trial Court requires to be set aside as the Trial Court did not take into account the fact that there is no denial of the contention of the petitioners relating to the denial of title in the earlier round of litigation by the vendors of the petitioners and in such circumstances, the Trial Court ought to have permitted the issue relating to limitation to be treated as a preliminary issue. The learned counsel would submit that in view of the non-denial of the earlier round of litigation and the factum of denial of title by the vendors of the petitioners, nothing further is required to be gone into and the matter could be taken up as a preliminary issue.

9. The learned counsel for respondents, on the other hand, contends that the suit is of the year 2015 and the question of whether there is a denial of title by the vendors of the petitioners and whether that would amount to an admission by

the respondents herein is a matter of fact which requires to be gone into by way of a trial. In those circumstances, the question of limitation cannot be treated as a preliminary issue.

10. The Trial Court considered the following judgments:

- i) *National Insurance Company Limited Vs. Rattani*¹**
- ii) *Mongia Reality and Buildwell Private Limited Vs. Monik*²**
- iii) *Nusli Neville Wadia Vs. Ivory Properties*³**

and had held that in the event of a clear cut admission, it would be open to the Court to try the question of limitation as a preliminary issue. However, the Trial Court also held that where it is a mixed question which requires to be ascertained by the Trial Court, it would not be permissible to consider the question of limitation as a preliminary issue and a trial is necessary for determination of these facts.

11. In the present case, the petitioners are relying upon facts, pleadings and submissions that are said to have been

¹ 2009 (2) SCC 75

² 2022 (11) SCC 572

³ 2020 (6) SCC 557

taken up in the course of an earlier round of litigation. The said factual aspects would need to be demonstrated before the Court by way of a proper trial in which the evidence relating to such denial of title, etc. would have to be weighed and considered by the Trial Court in the present case.

12. In those circumstances, this Court does not find any reason to interfere with the orders of the Trial Court dated 24.07.2023. However, keeping in view the fact that the suit is of the year 2015, this revision petition is disposed of with a direction to the Trial Court to dispose of the suit at the earliest and preferably within a period of three (03) months from the date of receipt of this order. There shall be no order as to costs.

As a sequel, interlocutory applications pending, if any, in this Civil Revision Petition shall stand closed.

R. RAGHUNANDAN RAO, J

Date: 07.10.2023
MJA

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