

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

C.R.P.No.926 of 2021

ORDER:

The respondents herein filed O.S.No.32 of 2015 before the II Additional District Judge, Kurnool at Adoni, against the petitioner herein for partition of the suit schedule property, which is said to be the absolute property of the father of the respondents and the petitioner.

2. The case of the respondents was that they are sisters of the petitioner. The suit schedule property belonged to their father, who passed away some time back leaving behind the petitioner, respondents and their mother. After the demise of their mother in the year 2013, differences arose between them resulting in plaintiffs demanding their 1/4 each share in the property as per the Muslim Law. As the petitioner was unwilling to accept partition, the respondents are said to have approached the trial Court. In the plaint, the respondents also mentioned that on 27.07.1992 and 18.08.1992 the respondents are said to have executed relinquishment deeds, which are said to have been filed along with the plaint. It is the case of the respondents that these relinquishment deeds are not binding on them when their mother was alive.

3. The petitioner had filed a written statement contending that after the demise of their father, a partition had taken place between them and the 1st respondent has executed a registered relinquishment deed dated 18.08.1992 and the 2nd respondent executed a registered relinquishment deed dated 27.07.1992 relinquishing, in favour of the petitioner, the properties, which are mentioned in Schedule-B of the said relinquishment deeds. It is the case of the petitioner that these Schedule-B properties are the subject matter of the suit wherein the respondents

are seeking partition. The petitioner also stated that the 1st respondent had given a sworn affidavit before an Advocate Notary on 03.07.2006 affirming that suit bearing O.S.No.27 of 2005 filed by the petitioner on the file of the Senior Civil Judge, Adoni, for partition of some of the properties, had been settled before the Lok Adalat on 28.01.2006 and Lok Adalat Award No.129/2006 was also passed. It is the further case of the petitioner that the respondents and their mother had given up their right having received a consideration from the petitioner in respect of the above properties.

4. The petitioner had thereafter, filed I.A.No.324 of 2018 under Order VII Rule 11 C.P.C., for rejection of plaint. The contention of the petitioner in this application was that the suit was barred by limitation and it was also barred by general law. The respondents contested this application. After hearing both sides, the trial Court by order dated 04.05.2021 dismissed I.A.No.324 of 2018 on the ground that the said application was relying upon the contents of the written statement filed by the petitioner and that an application under Order VII Rule 11 has to be considered only on the basis of the pleadings in the plaint. Aggrieved by the said order, the petitioner has approached this Court by way of the present civil revision petition.

5. Sri Vivekananda Virupaksha, learned counsel appearing for the petitioner would submit that in view of the relinquishment deeds executed in the year 1992 and the settlement of various issues under the Lok Adalat award mentioned above, there are no family properties left for division. On this basis, he contends that the suit is barred by limitation as the relinquishment deeds were executed in the year 1992 and the suit for partition has been filed in the year 2013.

6. Learned counsel for the petitioner would also submit that having admitted that there are two relinquishment deeds, the respondents cannot maintain this suit without seeking to get these two relinquishment deeds set aside. As no such prayer is available in the suit, it would have to be held that the suit is not maintainable. For this proposition, he relied upon the judgment of the erstwhile High Court of Andhra Pradesh in **Habeeba Begum and Anr., vs. Gulam Rasool and Ors.**¹ and **Gadiyaram Padmavathi and Ors., vs. Addepalli Hanumantha Rao and Ors.**².

7. Sri Raja Reddy Koneti, learned counsel appearing for the respondents would submit that the question of limitation is a mixed question of law and fact which can only be decided after appropriate evidence in this issue is adduced during the Trial of the suit. He also points out to the fact that the pleadings in the suit do not, in any manner, make out a case in favour of the petitioner that the suit is barred by limitation. He submits that it is only after a trial, taking into account the pleadings in the written statement, the trial Court can arrive at a decision in this regard. Learned counsel also submits that in such a situation the suit cannot be rejected at this stage on the ground of limitation.

8. The learned counsel for the respondent would also submit that except stating that there are two relinquishment deeds, which had been obtained under false pretence of dividing the remaining property, the respondents have not made any other statement in the plaint. He submits that in such a situation, the scope of the relinquishment deeds

¹ 1999 (6) ALD 20

² 2007 (6) ALD 388

need to be gone into and the question whether such relinquishment deeds can bar partition of the properties, would also have to be gone into.

9. It is settled law that in an application under Order VII Rule 11 C.P.C., the Court will only look into the averments in the plaint and verify whether any of the clauses set out under Order VII Rule 11 C.P.C., would be applicable, strictly on the basis of the pleadings in the plaint. The stand taken by the defendant cannot be looked into while considering an application under Order VII Rule 11 C.P.C.

10. Keeping this in mind, it would be clear that the question of limitation cannot be decided strictly on the basis of the pleadings in the plaint. As pointed out by the learned counsel for the respondents, evidence would be required in a duly conducted trial before any conclusion can be drawn on the question of limitation.

11. The respondents have specifically pleaded that the relinquishment deeds are dated 18.08.1992 and 27.07.1992 and also mentioned that they are being filed along with the plaint. The said deeds of relinquishment were marked before the trial Court in the plaint, for purposes of identification as Exs.P.10 and P.11.

12. The suit schedule contains two items of property. Item No.1 of the schedule consists of two properties, viz., Ac.14.82 cents of land in various survey numbers of Kolugotla village and Ac.1.25 cents of land in Muravani village. Item No.2 again consists of four house properties in Yemmiganur village. The relinquishment deed dated 27.07.1992 executed by the 2nd respondent and the relinquishment deed date 18.08.1992 executed by the 1st respondent do appear to contain some of the properties mentioned in the schedule to the suit. However, all the properties mentioned in the suit do not appear to be covered under these

two relinquishment deeds. The petitioner is relying upon the further proceedings in Lok Adalat for claiming right and title over the remaining properties. However, the award of the Lok Adalat or the suit, bearing O.S.No.27 of 2005, has not been mentioned in the plaint. In these circumstances, the Lok Adalat Award cannot be taken into consideration while dealing with an application under Order VII Rule 11 of C.P.C. In the absence of the Lok Adalat Award, it would not be appropriate to reject the plaint at this stage.

13. In the circumstances, this civil revision petition is dismissed. There shall be no order as to costs. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

However, the observations in this order shall not be taken into account while these issues are decided in the suit

18th January, 2022
Js.

R. RAGHUNANDAN RAO, J.

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Js.

18th January, 2022