

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT
HYDERABAD

THURSDAY, THE TWENTY EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND THIRTEEN

Present
HON'BLE SRI JUSTICE G. BHAVANI PRASAD

CIVIL REVISION PETITION No.2876 of 2012

Between:

M/s. M.G.Auto Nagar Association,
Represented by its President
Sri Shaik Nanne Sab and others .. Petitioners

And

Kota Satyanarayana .. Respondent

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The Court made the following:

ORDER:

Heard Smt. S. Parinitha, learned counsel for the petitioners, and Sri V.Nitish, learned counsel for the respondent.

The order in I.A.No.778 of 2011 in O.S.No.944 of 2006 on the file of the Principal Junior Civil Judge's Court, Proddatur dated 24.01.2012 is the subject of grievance in this Civil Revision Petition.

The revision petitioners/plaintiffs filed an interlocutory application seeking permission for amending the plaint to include the prayer for cancellation of the sale deed dated 11.04.2000 as detailed in the petition. The petition was filed at the stage of PW.1 being examined-in-chief during trial of the suit and the defendant resisted the request for amendment by contending that apart from the claim of the plaintiffs being barred by Order II Rule 2 and Section 11 of the Code of Civil Procedure, the proposed amendment is also barred by limitation by the time of the petition.

The trial Court in the impugned order, after referring to the pleadings and the factual background, noted that even in the written statement filed on 23.01.2007, a specific plea was taken by the defendant that the suit for mere permanent injunction is not maintainable without challenging the sale deed dated 11.04.2000 executed in his favour. The trial Court observed that the plaint itself referred to the sale deed dated 11.04.2000 and the plaintiffs had also added the relief of declaration by filing I.A.No.856 of 2009 earlier, and hence the application filed in 2011 is belated deserving

dismissal with costs.

The revision petitioners contended that no new cause of action was introduced and no change in the nature of the suit resulted by the proposed amendment and mere delay could not have been a ground to dismiss the application. To avoid multifariousness of litigation about the voidable document dated 11.04.2000, the plaintiff ought to have been permitted to be amended by allowing the application.

The suit was filed on 28.08.2006 with an amendment in the relief sought for in the meanwhile making it one for declaration of the right and title of the plaintiffs over the plaintiff schedule property and the consequential relief of permanent injunction. The original plaintiff itself specifically stated in paragraph No.7 that the defendant in the course of his illegal activities got the suit property registered on 11.04.2000 under a sale deed allegedly executed by Gadde Anjaneyulu, the then Treasurer of the plaintiff Association. The plaintiffs went on further to state as to why the said sale deed was vitiated. The written statement is claimed to have challenged the maintainability of the suit without seeking any relief for cancellation of the sale deed even on 23.01.2007 and the present application for amendment is dated 30.09.2011, obviously much beyond three years from the dates of the plaint and the written statement.

Article 59 of the Limitation Act, 1963 prescribes that any suit to cancel or set aside an instrument or decree or for the rescission of a contract shall have to be instituted within three years, when the facts entitling the plaintiff to have the instrument cancelled or set aside first became known to him. When the

averments in the original plaint themselves specifically refer to the knowledge of the plaintiffs about the execution of the document in question and the factors vitiating the same, the period of limitation under Article 59 should be computed from the date of the plaint itself or at least the date of the written statement, both of which are much beyond the prescribed period of limitation for filing any suit for cancellation of the said document by the time the amendment petition was filed. Under these circumstances, the trial Court cannot be considered wrong in rejecting the request for amendment as being belated.

Therefore, the Civil Revision Petition is dismissed without costs.

G. BHAVANI PRASAD, J

28.02.2013
KH/MVA