

(2011) 03 JH CK 0013
Jharkhand High Court
Case No: Civil Revision No. 11 of 2011

Smt. Alimun Nisha and Another

APPELLANT

Vs

Md. Shaheed Ahmad and Others

RESPONDENT

Date of Decision: March 29, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115

Citation: (2011) 2 JCR 406

Hon'ble Judges: Poonam Srivastava, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Poonam Srivastav, J.

Heard Mr. Jai Prakash, learned senior counsel appearing on behalf of "the revisionist.

2. The order impugned is dated 7th December, 2010 passed by the Sub-Judge-1. Dhanbad in Title suit No. III of 2007, Md. Saheed Ahmad v. Smt. Alimun Nisha and Ors.. The suit for specific performance was instituted by the Plaintiffs against the Defendants and a preliminary objection with regard to the maintainability of the suit was raised on the ground of limitation as the suit was filed on 30th March, 2007 i.e. after eight years from the date of the alleged agreement dated 12th August, 1999.

3. Learned Counsel has placed the agreement and emphasised that only three months time was provided for acting upon the agreement. The Plaintiff did not honour the period of three months and did not do any Act on his part or showed any willingness to execute the sale-deed. Not only this, the period of three years provided under the Limitation Act has also lapsed long back and the suit has been instituted after eight years.

4. The Court below Has rejected the preliminary objection since the question raised is a question both of facts and law which has to be adjudicated after evidence. In these circumstances, the preliminary objection was refused and the Court below declined to decide it as a separate question on limitation before talcing evidence and proceeding with the suit. I am in complete agreement with the findings recorded by the Court below and since there is no jurisdictional error, I decline to exercise the revisional power u/s 115 of the Code of Civil Procedure.

5. The revision lacks merit and it is, accordingly, rejected. However, no order as to costs.

6. Learned Counsel for the Plaintiffs-Petitioners has made a request that since the revisionist is an old widow of more than 90 years and she is being harassed at such a late age. therefore, the suit may be decided expeditiously. It goes without saying that the Court below shall make every endeavour to decide the suit expeditiously and without giving any undue adjournment to the parties. It is also made clear that rejection of this revision shall not have any effect on the merit of the case which shall be decided on its own merit and on the basis of evidence placed, before the Court.