

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**CRP.No.5039 of 2014**

**ORDER :**

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.10.11.2014 in I.A.No.1307 of 2014 in O.S.No.289 of 2014 on the file of Principal Senior Civil Judge, Rajahmundry.

**2.** The petitioners herein are defendants in the suit.

**3.** The 1<sup>st</sup> respondent filed a suit against the petitioners to declare a lease deed dt.25.08.2011 and a rectification deed dt.11.04.2011 as invalid, inoperative and *ultra vires*; that it is not in conformity with the *minutes* of the Executive Council (LCM 450) held on 15.07.2011; and for costs.

**4.** The 1<sup>st</sup> respondent is admittedly a member of the Andhra Evangelical Lutheran Church [a Society registered under the Societies Registration Act, 1860]. It is the case of 1<sup>st</sup> respondent that the lease agreement in question had been registered in favour of 3<sup>rd</sup> petitioner and that grant of such a lease is contrary to the Resolution (LCM 450) dt.15.07.2011.

**5.** The 3<sup>rd</sup> petitioner has filed a written statement opposing the suit claim.

**6.** The petitioners herein had not filed any written statement as yet.

**7.** The petitioners filed I.A.No.1307 of 2014 praying the court to hear the issue of jurisdiction as a preliminary issue contending that since the above church is a Society registered under the Societies Registration Act, 1860 (for short, 'the Act'), provisions of the Andhra Pradesh Societies Registration Act, 2001 are applicable; by virtue of Section 23 of the Act thereof, the provisions of Arbitration and Conciliation Act, 1996 may be invoked or an application may be filed before the District Court for appropriate orders, but a suit is prohibited; and that the issue of jurisdiction be gone into at the earliest point of time, so that valuable time of the Court will not be wasted.

**8.** This application was opposed by 1<sup>st</sup> respondent who contended that the dispute is not between the members of Society but between third parties also who are not members of the church, and in such a situation a Civil Court will have jurisdiction to try the suit and provisions of Section 23 of the Andhra Pradesh Societies Registration Act, 2001 are inapplicable.

**9.** By order dt.10.11.2014, the Court below rejected the said application stating that petitioners would have the liberty to file a written statement and raised the question of maintainability of the suit therein, and it will be considered

in the main suit. But while doing so, it made certain observations which appeared to determine the question of jurisdiction.

**10.** The counsel for petitioners contended that when the application filed before the Court below is only to frame a preliminary issue on the question of jurisdiction, the impugned orders seem to suggest that the Court below, instead of doing so, went ahead and decided the issue of jurisdiction; that this is improper; and when the Court has observed in para.9 that such an issue can be gone into in the main suit, it ought not to have pre-judged it, as it did in the impugned order.

**11.** Although the counsel for 1<sup>st</sup> respondent sought to support the order passed by the Court below, I find considerable force in the contention of the counsel for petitioners.

**12.** When an application is moved before a Civil Court to decide an issue as a preliminary issue it can only decide whether it will take up such issue as a preliminary issue or not. While taking a view on such an application, it is not open to the Civil Court to go into the question which is sought to be argued as a preliminary issue by the parties.

**13.** Since the Court below has made an observation that the question of maintainability of the suit can be

raised as a plea in the written statement and proved by them in the main suit, it is possible to infer that the Court below was not willing to decide the issue of jurisdiction as a preliminary issue. While the exercise of the Court below in refusing to take up the issue as a preliminary issue may be well within its discretion, it was not open to the said Court to express an opinion on the maintainability of the suit while deciding not to decide the said issue as a preliminary issue.

**14.** Therefore, insofar as the Court below has held that the issue of maintainability will be considered in the main suit, its order is sustained; but insofar as the Court below had made observations on the question of maintainability of the suit all such observations of the Court below in that regard are set aside.

**15.** The court below shall frame an issue, if a stand is taken in the written statement filed by petitioners that the suit is not maintainable, on the question of jurisdiction and maintainability of the suit, and decide the same in the main suit uninfluenced by any observations made on the question of maintainability of the suit in its order dt.10.11.2014 in I.A.No.1307 of 2014 in O.S.No.289 of 2014. It is made clear that this Court has not expressed any opinion on the question of maintainability of the suit either.

**16.** Therefore, the Civil Revision Petition is partly

allowed. No order as to costs.

**17.** As a sequel, miscellaneous petitions pending, if any, in this Revision shall stand closed.

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 25.08.2015

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