

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.R.P.No.4381 of 2015

ORDER:

The defendants 2 to 7 in O.S.280/2015 on the file of the Court of the VII Additional District Judge, Ongole are the revision petitioners in the present revision filed under Article 227 of the Constitution of India. The present revision petitioners assails the order dated 23.09.2015 passed by the said Court in I.A.No.932/2015.

2. The first respondent herein instituted OS.No.280 of 2015 against the second respondent and the petitioners herein for injunction in respect of 880.08 sq yards of site including structures i.e., Eschol Prayer House and the residential house for the pastor situated at D.No.53-1-3 in Sy.No.422 of Cloughpet, 1st Lane, Ongole, Prakasam District.

3. Along with the suit the plaintiff/first respondent herein filed the present I.A.No.932/2015 under Order 39 Rules 1 and 2 read with Section 151 of C.P.C, seeking *ad-interim* injunction to restrain the defendants from interfering with the administration, functioning, possession and enjoyment of the petition schedule Church.

4. The second defendant filed a counter, resisting the said application and opposing the relief sought therein. The VII Additional District Judge, Ongole, by way of an order dated 23.09.2015, granted *ad-interim* injunction.

5. Calling in question, the validity and the legal sustainability of the said order, the present revision has been filed.

6. Heard Sri S.Ramchandra Rao, learned Senior Counsel, representing Sri K.R.Prabhakar, learned counsel for the petitioners on record and Sri C.V.Mohan Reddy, learned Senior Counsel, representing Sri K.V.Bhanu Prasad, learned counsel for the first respondent/plaintiff.

7. It is contended by the learned Senior Counsel Sri S.Ramchandra Rao, that the *ad-interim* injunction order passed by the learned Additional District Judge is erroneous, contrary to law and opposed to the very spirit and object of the provisions

of order 39 Rules 1 and 2 of the Code of Civil Procedure. It is the further submission of the learned Senior Counsel that the order under challenge is in contravention of the orders passed by this Court in W.P.No.16430/2008, W.A.No.1289/2009, WP.28349/2013, WP.8277, 8279 and 8291/2014 and various other orders passed by this Court and the orders passed by the civil Courts also. It is also the submission of the learned senior counsel that the impugned order is vitiated by *mala fides*. It is further contended that the learned District Judge, without verifying the record properly passed the orders in I.A.895/2015 in CMA.No.25/2015. It is also the contention of the learned counsel that the essential ingredients for granting relief of injunction viz., *prima facie* case, balance of convenience and irreparable loss are not in favour of the plaintiff, as such, the learned District Judge grossly erred in granting *ad interim* injunction.

8. On the contrary, it is contended by the learned Senior Counsel C.V.Mohan Reddy, appearing for the plaintiff/first respondent herein, that the present revision filed under Article 227 of the Constitution of India is not maintainable in view of availability of alternative remedy of appeal to the petitioner against the impugned order under the provisions of Order 43 Rule 1 (r) of the Code of Civil Procedure. It is also the contention of the learned Senior counsel that having filed a counter on 26.09.2015 in I.A.932/2015, the petitioners herein ought to have persuaded the Court below to pass appropriate orders on the injunction application and ought not to have approached this Court under Article 227 of the Constitution of India. It is also the submission of the learned Senior Counsel that no application under Section 24 of the Code of Civil Procedure has been filed by the petitioners herein and the *mala fides* sought to be pressed into service are not supported by any material and without being supported by any material it is absolutely not open for the petitioners herein to allege the same. It is also the submission of the learned Senior Counsel that it is always open for the petitioners herein to file an application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the plaint, if they are advised to do so. It is also submitted by the learned Senior Counsel that CMA.25 of 2015 was allowed by the Court below.

In support of his contentions and submissions, learned counsel for the respondent relied upon the Judgment of the Hon'ble Apex Court in the case of ***SURYA DEV RAI V. RAM CHANDER RAI***.

9. In the above backdrop, now the issues that emerge for consideration of this Court

are_

1. Whether the present revision filed under Article 227 of the Constitution of India is entertainable in view of alternative remedy available to the petitioners under Order 43 Rule 1 (r) of the Code of Civil Procedure?

2. Whether the order under challenge is sustainable and tenable?

10. As evident from the material available on record, the sum and substance of the case of the petitioners is that the orders under challenge passed by the VII Additional District Judge is contrary to various orders passed by this Court. On the other hand, the case of the plaintiff/first respondent is that the VII Additional District Judge passed the impugned order by *prima facie* taking into consideration the material available on record and there is no illegality nor there is any material infirmity. The learned District Judge in the impugned order referred to the orders of this Court in W.P.No.19191/2014 dated 10.07.2014. It is to be noted that the first defendant/second respondent herein and others filed W.P.No.16430 of 2008 before this Court for the following reliefs:

“To issue an appropriate writ, order or direction more particularly, one in the nature of Writ of Mandamus declaring the action of the 1st Respondent in declaring that the Society i.e., 'Society of Trustees of Indigenous Churches in India', which was dissolved more than four years back by Resolution dated 23.3.2004 and all its assets and liabilities were transferred to the 1st Petitioner Trust, i.e., 'The Indigenous Churches in India Trust', is in vogue by his proceedings in Letter No. Soc2/2111/08, dated 19.2.2008, as illegal, without jurisdiction, power or authority and violative of fundamental rights guaranteed under Articles 14, 19 (1) (c), 25, 26 and 300-A of the Constitution of India and contrary to the provisions of the Andhra Pradesh Societies Registration Act, 2001, the Indian Trusts Act, 1882 and the Income Tax Act, 1961 and consequentially set aside the proceedings of the 1st Respondent in Letter No. Soc2/2111/08, dated 19.2.2008.”

11. A learned Single Judge of this Court by way of an order dated 24.06.2009 disposed of the said W.P.No.16430 of 2008 and the penultimate paragraph of the said order read as under:

“On the aforesaid analysis, this Court finds no infirmity in the conduct of the 1st respondent addressing the impugned letter dated 19-02-2008 to the 2nd respondent but holds and declares that the information in the said letter that the Society of Trustees of Indigenous Churches in India, Registered No. 114 of 1971 'is in vogue' is an information that is erroneous insofar as the 1st respondent is concerned, having regard to the special resolution passed by the said Society on 23-03- 2004 and intimation of such Resolution

furnished to the 1st respondent on 24-03-2004.”

12. As against the said order, W.A.No.960/2009 was filed, and later, the same was dismissed as withdrawn on 06.07.2010. In fact, as against the said order of the learned Single Judge another W.A.No.1289/2009 was filed before this Court and this Court on 09.11.2010 in W.A.No.1289/2009 granted order of *status quo*. It is also noteworthy that the District Registrar/Registrar of Societies, Hyderabad by virtue of an order vide proceedings No.14677/Soc/2013 dated 02.07.2014 had withdrawn various letters issued earlier. Questioning the said order dated 02.07.2014; the plaintiff/first respondent herein filed W.P.No.19191/2014 and this Court passed an interim order, directing that no further proceedings in pursuance of the said order dated 02.07.2014 should be taken up. The learned District Judge while referring to the said order passed the impugned order.

13. The first and foremost contention of the learned counsel for the plaintiff/first respondent is with regard to maintainability of the present revision under Article 227 of the Constitution of India. For the purpose of consideration of the said issue, it would be appropriate and apposite to refer to the provisions of Order 43 Rule 1 (r) of the Code of Civil Procedure.

“Order 43 Rule 1 (r) of CPC

1. Appeal from orders.- An appeal shall lie from the following orders under the provisions of section 104, namely:—

(r) an order under Rule 1, Rule 2, Rule 2A Rule 4 or Rule 10 of Order XXXIX;”

14. It is very much evident from the above provision of law that any order passed under Order 39 Rules 1 and 2 is appealable. In **SURYA DEV RAI** (*supra*) the Hon’ble Apex Court at paragraphs 24 and 26 held as follows:

“24. The difference between Articles 226 and 227 of the Constitution was well brought out in *Umaji Keshao Meshram v. Radhikaba*¹². Proceedings under Article 226 are in exercise of the original jurisdiction of the High Court while proceedings under Article 227 of the Constitution are not original but only supervisory. Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 excepting that the power of superintendence has been extended by this article to tribunals as well. Though the power is akin to that of an ordinary court of appeal, yet the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction

which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.

26. In order to safeguard against a mere appellate or revisional jurisdiction being exercised in the garb of exercise of supervisory jurisdiction under Article 227 of the Constitution, the courts have devised self-imposed rules of discipline on their power. Supervisory jurisdiction may be refused to be exercised when an alternative efficacious remedy by way of appeal or revision is available to the person aggrieved. The High Court may have regard to legislative policy formulated on experience and expressed by enactments where the legislature in exercise of its wisdom has deliberately chosen certain orders and proceedings to be kept away from exercise of appellate and revisional jurisdiction in the hope of accelerating the conclusion of the proceedings and avoiding delay and procrastination which is occasioned by subjecting every order at every stage of proceedings to judicial review by way of appeal or revision. So long as an error is capable of being corrected by a superior court in exercise of appellate or revisional jurisdiction, though available to be exercised only at the conclusion of the proceedings, it would be sound exercise of discretion on the part of the High Court to refuse to exercise the power of superintendence during the pendency of the proceedings. However, there may be cases where but for invoking the supervisory jurisdiction, the jurisdictional error committed by the inferior court or tribunal would be incapable of being remedied once the proceedings have concluded.”

15. It is very much obvious from a reading of the provisions of law that the principles and parameters laid down by the Hon’ble Apex Court in the above referred judgment, this Court is not inclined to entertain the present revision under Article 227 of the Constitution of India in view of the availability of the alternative remedy of appeal under the provisions of Order 43 Rule 1 (r) of the Code of Civil Procedure.

16. In view of the above, Point No.1 is answered against the petitioners and in favour of the first respondent herein. In view of the finding on Point No.1 on the maintainability of the revision petition, this Court does not propose to go into other merits of the matter.

17. For the aforesaid reasons, revision is dismissed as not maintainable. However, the petitioners are at liberty to avail the remedy under the provisions of Order 43 Rule 1 (r) of the Code of Civil Procedure. As a sequel, pending miscellaneous petitions, if any, shall stand closed. No costs.

A.V.SESHA SAI, J

Date:16.11.2015

Note:

Office is directed to
return the original copies
of the orders.

b/o grk

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.R.P.No.4381 of 2015

Dated: 16th November, 2015

