

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.2196 OF 2016

ORDER:

This revision is filed under Article 227 of the Constitution of India challenging the docket order passed by the XXI Junior Civil Judge, City Civil Court at Hyderabad in I.A.No.104 of 2015 in O.S.No.397 of 2014 in a petition filed under Order XIV Rule 6 read with Section 151 of Code of Civil Procedure (for short, hereinafter, referred to as "C.P.C.") to frame the following preliminary issue:

"Plaintiffs are entitled for perpetual injunction conflicting the perpetual injunction granted in O.S.No.508/13 on the file of VII Senior Civil Judge, City Civil Court, Hyderabad?"

The petitioners/defendants in the said I.A. specifically asserted that they have obtained permanent injunction in the earlier suit, in such case the plaintiffs are not entitled to claim perpetual injunction against the defendants in the present suit.

The respondents/plaintiffs filed counter-affidavit denying the averments made in the petition contending that there is no need to frame the preliminary issue in a suit for perpetual injunction and prayed for dismissal of the petition.

The trial Court after hearing both sides, passed the order dated 15.09.2015 dismissing the petition. Feeling aggrieved by the order passed by the trial Court, the present revision is filed on several grounds mainly contending that it is the duty of the Court to frame an issue when a fact is asserted by one side and denied by the other.

Learned counsel for the respondent contended that the respondents herein filed a petition to set aside the exparte order in O.S.No.508 of 2013 on the file of VII Senior Civil Judge, City Civil

Court, Hyderabad along with a petition filed under Section 5 of the Limitation Act, and the Court allowed the petition filed under Section 5 of the Limitation Act and the petition filed to set aside the ex parte order is pending till today. Therefore, there are no grounds to frame a preliminary issue as requested by the learned counsel for the petitioners.

Undisputedly, the suit is filed for grant of permanent injunction contending that the plaintiffs are in possession and enjoyment of the suit schedule property while complaining that the defendants in the suit are threatening to interfere or infringe the legal right of the plaintiffs to enjoy the property. The petitioners/defendants filed written statement contending that they have filed a suit in O.S.No.508 of 2013 on the file of VII Senior Civil Judge, City Civil Court at Hyderabad and obtained a decree restraining the respondents/plaintiffs from interfering with their peaceful possession and enjoyment of the property.

The present petition is filed under Order XIV Rule 6 of CPC, which deals with questions of fact or law may by agreement be stated in form of issues. This provision quoted in the petition is irrelevant to frame a preliminary issue. But Order XIV Rule 2 is the relevant provision, which enables the Court to frame a preliminary issue subject to provisions of sub-rule (2) thereof and pronounce judgment on all issues. As per sub-rule (2) of rule 2 of Order XIV of C.P.C., where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of an issue of law only, it may try that issue first if that issue relates to the jurisdiction of the court or a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal

with the suit in accordance with the decision on that issue.

In the present facts of the case, the proposed issue is not pertaining to jurisdiction of the Court or a bar to the suit created by any law for the time being in force, to decide the same as a preliminary issue by exercising power under Rule 2 of Order XIV of C.P.C.

Therefore, refusal to frame a preliminary issue as requested by the learned counsel for the revision petitioner is not illegal and on the other hand, the trial Court by strictly adhering to clauses (a) and (b) of sub-rule (2) of Rule 2 of Order XIV C.P.C declined to frame such preliminary issue. Even in the present revision, there is nothing on record to frame the proposed issue extracted above since it would not fall within clauses (a) and (b) of sub-rule (2) of Rule 2 of Order XIV C.P.C. Therefore, I do not find any error in the order passed by the trial Court warranting interference by this Court while exercising power under Article 227 of the Constitution of India.

In the result, the revision is dismissed. No order as to costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date:19.08.2016

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