HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.3794 of 2013

ORDER:

In this civil revision petition, under Article 227 of the Constitution of India, by the unsuccessful respondent/plaintiff, the challenge is to the order dated 02.08.2013 of the learned X Junior Civil Judge, City Civil Court, Hyderabad, passed in I.A.No.505 of 2013 in O.S.No.246 of 2013 filed under Order XIV Rule 2 of the Code of Civil Procedure, 1908 requesting to decide Issue No.3 framed by the trial Court in the said suit, namely, 'whether the suit is barred by pecuniary jurisdiction ?', as a preliminary issue and dispose of the suit on the said issue as it relates to the jurisdiction of the Court.

2. I have heard the submissions of Sri K.V.L.Jayasimha, party-in-person/ plaintiff in the suit and Sri Bankatlal Mandhani, learned counsel for respondents/defendants. I have perused the material record. Parties shall hereinafter be referred to as plaintiff and defendants for the purpose of convenience and clarity.

3. The facts necessary to be stated as a prelude to this order, in brief, are as follows:

Plaintiff filed the suit against the defendants 1 and 2 seeking a decree for perpetual injunction restraining them, their agents, servants, nominees etcetera or any person claiming through them from interfering with the plaintiff's possession and enjoyment over the premises bearing H.No.2-1-356/1/A, Mega City No.286, Ward 1 Block 2, Flat No.102, 1st Floor, admeasuring 1500 Square feet of plinth area with 48 square yards of proportionate undivided share in Star Homes, Street No.6, Gagan Mahal, Domalguda, Hyderabad, more fully described in the schedule annexed to the plaint. In the said suit the plaintiff also sought a decree for a perpetual injunction not to alienate/transfer/sell the said property and for costs.

4. The defendants filed a written statement resisting the suit. One of the issues framed by the trial Court viz., Issue No.3 is 'whether the suit is barred by pecuniary jurisdiction?' In the said suit, the defendants filed the subject petition requesting to decide the said issue as a preliminary issue. The plaintiff filed a counter resisting the suit. At the hearing of the said interlocutory application, both parties adduced no oral and documentary evidence. However, on merits and by the order impugned in this revision, the trial Court allowed the said petition and having recorded a finding that insofar as the relief of 'perpetual injunction not to alienate, transfer or sell the suit schedule house' the value of the suit claim for the purpose of court fee and jurisdiction exceeds its pecuniary jurisdiction directed the plaintiff to pay appropriate Court fee and ordered for return of the plaint to the plaintiff for presentation to proper Court and fixed a time of 30 days for completing the said exercise. Aggrieved thereof, the plaintiff preferred this revision.

5. The case of the defendants in support of their request in their application, in brief, is as follows:

The suit schedule house property was worth Rs.5,00,000/- in the year 1999 and its value was Rs.33,00,000/- in the year 2013. Market value certificate issued by the Sub-Registrar is also produced. These defendants in their written statement specifically pleaded that the trial Court is not having pecuniary jurisdiction to entertain the suit in view of the value of the subject matter of the suit. In view of the said facts and the legal position, the suit can be disposed of only by taking up Issue No.3 in regard to bar of suit on account of lack of pecuniary jurisdiction as a preliminary issue. If the said issue in regard to lack of pecuniary jurisdiction is decided in favour of the defendants, the trial Court loses jurisdiction to entertain and dispose of the suit. Hence, the said issue in regard to lack of pecuniary jurisdiction of the trial Court may be decided as a preliminary issue.

6. The case of the plaintiff in his counter, in brief, is as follows:

It is no doubt true that in the written statement, the defendants have raised the issue of pecuniary jurisdiction and further stated that the Court fee paid by the plaintiff on the reliefs claimed in the suit is not correct. Only on the basis of Issue No.3, which is framed by the Court with reference to lack of pecuniary jurisdiction, the defendants filed their petition requesting the Court to decide that issue as a preliminary issue without deciding the other issues. There is a clear distinction between jurisdiction with regard to subject matter of the suit on one hand and the jurisdiction with regard to territorial jurisdiction and pecuniary jurisdiction on the other. Issues are of two kinds – (1) Issues of fact, and (2) Issues of law. The Code of Civil Procedure does not confer jurisdiction on the Court to preliminarily decide the issues which are dealing with mixed questions of fact and law. The Court can dispose of the suit without deciding all the issues if only the issue to be decided as a preliminary issue is an issue of law. Further, whether or not a particular issue shall be decided as a preliminary issue depends upon the discretion of the Court. Further, such discretionary jurisdiction to try an issue of law as a preliminary issue may be exercised only when the Court is of the opinion that the whole suit may be disposed of on such issue of law alone. Where the resolution of an issue depends upon a decision on facts, such an issue is not an issue of law and cannot be decided as a preliminary issue. Since the present issue regarding lack of pecuniary jurisdiction of the trial Court is a mixed issue of fact and law, the petition is liable to be dismissed.

7. At the hearing, the learned counsel for plaintiff, while reiterating the contentions in the counter, contended as follows: 'The Court below erred in directing the plaintiff to pay the deficit Court fee and in returning the plaint for presentation to proper Court by fixing 30 days for said purpose by wrongly deciding an issue, which is a mixed question of fact and law, as a preliminary issue. As per settled law, when the relief claimed is a decree for perpetual injunction not to alienate the suit property, the plaintiff is at liberty to value the relief notionally and such a relief need not be valued on the market value of the property. When the relief sought for in a suit is perpetual injunction, the market value of the property is irrelevant. On this settled position, there is no need to cite a number of decisions. Since the suit is for mere perpetual injunctions, it is the prerogative of plaintiff to notionally value the reliefs. If the Court is not satisfied with the notional valuation made by the plaintiff, the Court is empowered to revisse and reasonably enhance the value, but cannot direct the plaintiff to value the relief of perpetual injunction at the market value of the property as the discretion is vested with the plaintiff to value the relief of perpetual injunction notionally and pay the Court fee accordingly. Though the Court has power to revise the notional valuation reasonably, the provision does not empower the Court to direct that the value should be the actual value or market value of the property for the purpose of court fee and jurisdiction. The trial Court failed to consider the settled legal position. Since the issue in regard to pecuniary jurisdiction is not pure issue of law and is a mixed question of fact and law, the said issue ought to have to be decided along with other issues after full-fledged trial but not ahead of other issues and as a preliminary issue. The trial Court did not properly appreciate the facts and legal position obtaining. Hence, the revision is to be allowed and the order impugned is liable to be set aside."

8. *Per contra*, the learned counsel for respondents, while reiterating the contentions of the defendants, would submit as follows: "The suit is not merely filed for a perpetual injunction restraining the defendants, their agents, servants, nominees etcetera from interfering with the possession and enjoyment of plaintiff over the suit schedule property, but is also filed for perpetual injunction restraining the defendants, their agents, servants, nominees etcetera from alienating, transferring or selling the said property. The relief of perpetual injunction not to alienate or transfer or sell the suit property is to be valued on the market value of the suit house on the basis of the advantage which is sought to be gained or the loss which is sought to be avoided. If the property is alienated in the absence of a decree perpetual injunction, the plaintiff would suffer the loss equivalent to the value of the property. In other words, if the decree for perpetual injunction is granted, the plaintiff would have the advantage of enjoying the property of immense value. Therefore, the said relief is to be valued on the basis of the advantage which is sought to be derived or the loss which is sought to be avoided. The 2nd relief of perpetual injunction in regard to alienation, therefore, cannot be equated to the relief of perpetual injunction seeking to restrain the opposite parties from interfering with the possession and enjoyment of plaint schedule property. The said relief of perpetual injunction not to alienate or transfer or sell the property stands on a different footing and therefore, the said relief cannot be notionally valued. Moreover, the plaintiff claimed two perpetual injunctions in the suit, but valued only one of the perpetual injunction reliefs notionally at Rs.10,000/- and paid Court fee of Rs.786/-, but did not separately value the 2nd relief of perpetual injunction and pay any Court fee on the said relief. The trial Court appreciated the facts correctly and the legal position obtaining in proper perspective and passed a well considered judgment. Therefore, the said order does not brook interference.

9. I have given earnest consideration to the facts and submissions.

10. At the outset, it is to be noted that the plaintiff claimed two main reliefs in the suit. The said two prayers in the plaint read asunder:

(a) **A decree for perpetual injunction be granted in favour of plaintiff, restraining the defendants, their agents, servants, nominees etc., or any person(s) claiming through them from interfering with plaintiff's possession and enjoyment over the suit premises residential Flat No.102, First Floor, Star Homes H.No.2-1-356/1/A, Gagan Mahan, Domalguda, Hyderabad- 500 029, either by evicting the plaintiff from the suit property other than in due course of law or otherwise in any manner whatsoever.**

(b) **Any order (s) may be granted not to alienate, transfer, sell the suit property.**

(c) **Costs of the suit may be awarded any other relief(s) to which the plaintiff is entitled may also be granted."**

(Reproduced verbatim)

Insofar as the first relief aforestated there is no dispute that the said relief is notionally valued at Rs.10,000/- under Section 26(C) of A.P.C.F & S.V.Act and a court fee of Rs.786/- was paid. Neither the trial Court nor the defendants are objecting to the said valuation and the Court fee paid. However, since the second prayer (b) sought in the plaint is in regard to an injunction not to alienate or transfer or sell the suit property, the defendants inter alia contend that the plaintiff ought to have valued the said second relief claimed in the plaint on the market value of the property, which is Rs.33 lakhs in the year 2013, as per the valuation certificate produced by them. They also contend that if the said valuation is to be taken into consideration, the trial Court, the Court of the Junior Civil Judge, lacks pecuniary jurisdiction to entertain and dispose of the suit and that therefore, the issue in question dealing with lack of pecuniary jurisdiction of the Court has to be decided as a preliminary issue and the suit has to be disposed on that issue alone. The plaintiff contends that the said issue can also be notionally valued in the discretion of the plaintiff subject to reasonable revision of the said valuation by the Court, if the Court so chooses, but he cannot be compelled to value the said relief on the market value of the property. The plaintiff also contends that in any view of the matter, since the said issue being not an issue dealing with a pure question of law but dealing with both issues of fact and law, the said issue need not be decided as a preliminary issue; and, the said issue has also be decided along with other issues after full-fledged trial and not ahead of the other issues.

11. In this backdrop, it is necessary to refer to the relevant provision of Section 26 of A.P.C.F & S.V.Act, 1956. Section 26 (c) reads as under:

> **26. Suits for injunction:-- In a suit for injunction, ---**
> **(a) xx xxx xxx xxx**
> **(b) xx xxx xxx xx**
> **(c) in any other case, whether the subject-matter of the suit has a market value or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or at which such relief is valued by the Court, whichever is higher."**

12. It is to be first noted that the second relief is not even notionally valued in the plaint and no court fee at all was paid on the said relief. Therefore, it is to be observed that the Institution Court, where the suit was instituted before it was made over to the X Junior Civil Court, did not properly scrutinize the plaint at the time it is registered. The trial Court also did not verify the valuation after it is made over to it and did not consider the said aspect even while disposing of the subject interlocutory application. Be that as it may.

13. At the time of numbering of the suit, while dealing with the aspect of proper valuation of the relief claimed and the court fee to be paid thereon, the Court will only examine the plaint averments. If on verification of plaint averments, the Court is satisfied that the relief claimed in the suit is properly valued and the court fee paid is correct, the Court will register the suit. However, in the written statement, if the defendant disputes the correctness of the valuation of the relief and the court fee paid and raises an issue, the Court will frame an appropriate issue on the aspect of sufficiency of valuation and court fee; further, if necessary, an issue as to 'whether the Court is having pecuniary jurisdiction to entertain the suit and grant the relief in question', will also be framed. In the case on hand, the plaintiff having claimed the relief (b) stated supra did not at all value the said relief and pay any court fee.

14. In this backdrop, it is necessary to examine the relevant plaint averments which are as follows: 'The 1st defendant is a widow and the 2nd defendant is her daughter. The plaintiff married the 1st defendant keeping in view the tragedy he faced in life and the tragedy the 1st defendant faced, and also the ideology which he practices as an idealistic person. Thereafter, the plaintiff performed the marriage of the 2nd defendant as per the choice of the 1st defendant with one A.Srinivasa Rao and purchased a double bed room flat bearing No.304 in Raghavendra Apartments at Barkatpura. The 2nd defendant gave birth to Anoohya and Ananya. The plaintiff from his own income acquired different properties in and around Hyderabad and Bangalore and kept the said properties in the name of 1st defendant. He had also purchased gold, platinum and other precious ornaments and kept them with the 1st defendant along with some cash. Out of such acquired properties, the suit schedule property and other three bedroom flats bearing Nos.101 and 103 were kept in the name of the twin daughters of the 2nd defendant. The 1st defendant was mentioned as the guardian. Neither the 1st defendant nor the 2nd defendant has any sources of income for purchasing the said two flats. Subsequently, there were differences and disputes between the parties. A pre-litigation case for divorce was filed before the Lok Adalat with a joint memo as to the sharing of the properties. The properties were under attachment as per the orders in the proceedings in OP 436 of 2003 pending on the file of the Court of the learned Chief Judge, City Civil Court, Hyderabad. The said attachment on the properties covered by the joint memo was raised on 18.01.2010 as per the orders dated 18.01.2010 in I.A.No.3433 of 2009 and since 2006 onwards, the plaintiff is in enjoyment and peaceful possession of the properties mentioned in the Memorandum of Understanding.'

Pleading *inter alia* the above averments and other averments in the plaint, and by attributing and making further averments in regard to certain overt acts said to have been committed by the defendants 1 and 2, the plaintiff brought the suit. The defendants while denying the claims of the plaintiff, laid a claim to the suit schedule property and contended that in view of the averments in the plaint, the plaintiff ought to have valued the relief (b) in the plaint on the market value and paid the necessary court fee. While framing issues, the trial Court also framed issue no.3 in regard to its pecuniary jurisdiction as follows: 'Whether the suit is barred by pecuniary jurisdiction?'

15. It is pertinent to note that the learned counsel for the defendants placed reliance on a decision in **Allam Ramu and another v. Yelakacherla Narasimhulu**[1] which was followed by the trial Court, wherein the facts and the ratio are as follows: 'The 1st plaintiff entered into possessory sale agreement with the defendant in regard to item no.1 of the plaint schedule property having paid certain amount as advance out of the sale consideration of more than six crores of rupees agreed to between the parties. The 2nd plaintiff obtained a possessory sale agreement from one Merugu Rajeswara Rao, who earlier purchased the item no.2 of the plaint schedule property having paid certain amount as advance out of the sale consideration of more than 50 lakhs agreed to between them. The 2nd plaintiff's case is that he entered into an agreement of sale with possession with the earlier agreement holder of the defendant, with the consent and knowledge of the defendant. Subsequently, writ petitions were filed on the refusal of the Sub Registrar to register the sale deeds. When the defendant allegedly suppressed the existence of the said agreements and tried to alienate the suit property to third parties, a notice calling upon him to register regular registered sale deeds was issued and on the return of the said notice stating that he was absent continuously at the address mentioned in the notice, a suit for perpetual injunction restraining the defendant, his agents and heirs from alienating the suit properties to third

[1] 2008 (3) ALD 28

parties by way of sale, gift etcetera was filed before the Junior Civil Judge's Court by notionally valuing the relief at Rs.20,000/-. The sale considerations are in crores and lakhs of rupees.' This Court in paragraphs (12) and (13) of the judgment held as under:

> **The proper court fee payable is on the value of the property, which he wants to keep in tact from alienation. Section 24(d) and Section 26(c) which are similar in nature applies to cases whether the subject matter of the suit is capable of valuation or not or has market value or not. In either case the court-fee has to be paid on the amount at which the relief sought is valued in the plaint or at which such relief is valued by the court, whichever is higher. It follows that if the court is not satisfied with the value placed on the relief by the plaintiff, it is entitled to value the relief itself and if such value exceeds the value adopted by the plaintiff, the court-fee has to be paid on the value arrived at by the court.**
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> **13. In view of the same, prima-facie, valuation as shown by the plaintiff for the purpose of jurisdiction will not reflect the value of the relief or value of the advantage which the plaintiff will gain or loss will be suffered if the defendant allowed to sell property. The plaint allegations go to show which is beyond the pecuniary jurisdiction of the Junior Civil Judge before whom the suit was laid by notionally valuing at Rs.20,000/-. Therefore, the lower court has rightly returned the plaint to properly value it and to be presented before the appropriate court, which will have the jurisdiction to try the suit.**

Placing reliance on this decision, it is sought to be contended that since the plaintiff sought an injunction not to alienate, transfer or sell the property and as he wants to keep the property in tact from alienation, the plaintiff is required to value the relief claimed on the market value of the property, as the relief has to be valued on the basis of the advantage which is being sought to be gained and the loss which is being sought to be avoided and that if the relief is valued on market value, which is more than the pecuniary jurisdiction of the Junior Civil Judge's Court, the Court below has no other alternative but to return the plaint for presentation to proper court having pecuniary jurisdiction to entertain the suit. A plain consideration of the facts and ratio would indicate that the decision was rendered on the facts of the said case and no principle of universal application was laid down in the cited case. Therefore, the case on hand is distinguishable on facts and the ratio, if any, in the cited decision is not relevant and applicable to the present case on hand.

16. Now it is necessary to refer to the precedential guidance in the decision in **Anathula Sudhakar v. P.Buchi Reddy (Dead) by L.Rs and Ors.,**[2] wherein the Supreme Court summarized the position in regard to suits for prohibitory injunction relating to immovable property as under:

> **(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.**
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> **(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.**
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> **(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.**
>
> **(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.**

As per the ratio in the cited decision, as a suit for perpetual injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the possession. But, in the case on hand, the relief (b) relates not to possession but to the issue of plaintiff's entitlement to an injunction restraining the defendants from alienating or transferring or selling the plaint schedule property. A plain

[2] AIR 2008 SUPREME COURT 2033

reading of the ratio supra keeping in view the facts and circumstances of the present case would signify that the trial Court is required to use its discretion carefully and decide as to whether in the present case, the matter in issue involved is a straightforward and simple matter and whether or not the Court would incidentally decide the title even while answering the issue no.3 regarding lack or otherwise of the pecuniary jurisdiction of the Court. It is also for the Court to decide as to whether or not it would incidentally decide the correctness or otherwise of the valuation of the relief (b) claimed in the plaint and the sufficiency or otherwise of the court fee paid. It is also for the trial Court to come to a conclusion as to whether the matter involves complicated questions of fact and law relating to title and it is necessary to relegate the parties to the remedy by way of comprehensive suit for declaration of title instead of deciding the issue raised in a suit for mere injunction. It is for the trial Court to also decide as to whether the possession being claimed is *de jure* possession and whether or not it is possible to decide the issue no.3 framed by it without a finding in regard to the plaintiff's title to the plaint schedule property. All these aspects, the trial Court can decide only after some evidence is adduced by both the parties at trial. Therefore, the issue no.3, in the well-considered view of this Court, does not involve a pure question of law and the decision on the said issue requires resolution of certain factual disputes as well. Hence, in the well considered view of this Court, the said issue no.3 is not an issue on which a decision can be rendered by taking it as a preliminary issue without giving an opportunity to the parties to adduce any evidence in the suit. Keeping in view the discussion coupled with reasons supra, I have gone through the order impugned. The trial Court erroneously allowed the petition and directed the plaint to be returned without adverting to the plaint averments, which are the basis for the reliefs claimed in the suit, and without adverting to the contentions and the questions that require incidental determination while deciding the subject issue and without considering the fact that the decision on the subject issue involves incidental resolution of disputed factual aspects.

17. On the above analysis, this Court finds that the revision petition can be allowed and the order impugned can be set aside, subject to certain observations and directions to meet the ends of justice.

18. Before parting it is necessary to consider as to whether the revision petition is maintainable as the trial Court by the order impugned directed the plaintiff to pay appropriate Court fee and ordered for return of the plaint to the plaintiff for presentation to proper Court and fixed a time of 30 days for completing the said exercise. In the case on hand, after the defendants had entered appearance, the trial Court came to the opinion that the plaint should be returned after accepting the request of the defendants. However, the trial Court failed to follow the procedure contemplated under Order VII Rule 10 A of the Code of Civil Procedure, 1908, which deals with the power of the Court in that regard. The provisions of law under Order VII Rules 10 and 10 A of the Code read as under:

> **10. Return of plaint.- (1) Subject to the provisions of rule 10A, the plaint shall at any stage of the suit be returned to be presented to the court in which the suit should have been instituted.**
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> **Explanation: For the removal of doubts, it is hereby declared that a court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint, under this sub-rule.**
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> **(2) Procedure on returning--On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.**
>
> **10A. Power of court to fix a date of appearance in the court where plaint is to be filed after its return.- (1) Where, in any suit, after the defendant has appeared, the court is of opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the plaintiff.**
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> **(2) Where an intimation is given to the plaintiff under sub-rule (1), the plaintiff may make an application to the court--**
>
> **(a) specifying the court in which he proposes to present the plaint after its return,**
>
> **(b) praying that the court may fix a date for the appearance of the parties in the said court, and**
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> **(c) requesting that the notice of the date so fixed may be given to him and to the defendant.**
>
> **(3) Where an application is made by the plaintiff under sub-rule (2), the court shall, before returning the plaint and notwithstanding that the Order for return of plaint was made by it on the ground that it has not jurisdiction to try the Suit,--**

(a) fix a date for the appearance of the parties in the court in which the plaint is proposed to be presented, and

(b) give to the plaintiff and to the defendant notice of such date for appearance.

(4) Where the notice of the date for appearance is given under sub-rule (3)

(a) it shall not be necessary for the court in which the plaint is presented after its return, to serve the defendant with the summons for appearance in the suit, unless that court, for reasons to be recorded, otherwise directs, and

(b) the said notice shall be deemed to be a summons for the appearance of the defendant in the court in which the plaint is presented on the date for fixed by the court by which the plaint was returned.

(5) Where the application made by the plaintiff under sub-rule (2) is allowed by the court, the plaintiff shall not be entitled to appeal against the Order returning the plaint.

Under Rule 10A, where, in any suit, after the defendant has appeared, the court is of the opinion that it has no jurisdiction, should return the plaint and before doing so shall intimate its decision to the plaintiff. The plaintiff thereupon may make an application as contemplated by Sub-rule (2). If the plaintiff makes such an application, the court shall fix the date of appearance by the parties in the court in which the plaint is to be presented and give notice of such date to the parties. Since the defendant by such notice is made aware of the suit against him and the date when he has to appear, the notice can be treated as a summons within the meaning of Rule 1 of Order V. A date of notice to the defendant, therefore, would be the date of service of summons and the time to file written statement as contemplated by Order VIII Rule 1 would, therefore, start to run from the date of notice subject to the plaintiff presenting the plaint in the proper Court which has jurisdiction. Further, when the plaint was returned for presentation to the proper court and was presented in that court, the suit can be deemed to be instituted in the proper court only when the plaint was presented in that court. In other words, the suit instituted in the proper Court by the presentation of the plaint returned by the Original Court was not a continuation of the suit filed in the Original Court. [See the decisions in Hirachand Succaram Gandhy v. G.P Rly Co.: AIR 1928 Bom 421, Bimla Prasad Mukerji v. Lal Moni Devi: AIR 1926 Cal 355; and Ram Kishan v. Ashirbad: ILR 29 Pat 699: AIR 1950 Pat 478.] This legal position reflects the importance of the requirement of the said provision of law. It is apposite to note that the present revision is filed under Article 227 of the Constitution of India. Any order of the Court below, which is passed in ignorance of the mandate of law and in violation of the principles of natural justice is liable to be set aside while exercising the jurisdiction under Article 227 of the constitution of India. Keeping in view the said fact that this revision petition is filed under the said Article of the Constitution of India, whereunder this Court is having supervisory jurisdiction, it is necessary to refer to the relevant precedential guidance in **Surya Dev Rai V/s Ram Chander Rai and others**[3] which is as follows:

> **"(1) Amendment by Act No. 46 of 1999 with effect from 01.07.2002 in Section 115 of Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.**
> **(2)…...**
> **(3) …**
> **(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.**
> **(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.**
> **(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.**
> **(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to**

[3] AIR 2003 SC 3044

intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annual or set aside the at, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case."

When that error is manifest and apparent on the face of the proceedings, this Court is obligated to issue a writ of certiorari exercising the supervisory jurisdiction in a case of this nature.

19. In the result, the Civil Revision petition is allowed and the order impugned is set aside and the trial Court is directed to follow the following directions while proceeding further with the suit.

(i) The trial Court shall first give a direction to the plaintiff to notionally value the relief (b) and pay the required court fee, as the said relief is not at all valued and no court fee is paid on the said relief and fix a specific time of few weeks for completing the said exercise and also for filing a neat copy of the plaint.

(ii) If issues alike as stated infra are not already framed, the trial Court shall frame the following additional issues.

(i) Whether the relief (b) is not properly valued? And, if so, the valuation of the said relief and the court fee paid thereon are not correct?

(ii) Whether the relief (b) cannot be claimed by the plaintiff without seeking declaration of title? And, if so, whether the suit insofar as the said relief is

to be dismissed by relegating the parties to the remedy by way of comprehensive suit for declaration of title?

(iii) The trial Court shall, after full-fledged trial, decide all issues and additional issues framed, if any, as directed in these orders and dispose of the suit on merits and in strict accordance with the procedure established by law.

Pending miscellaneous petitions, if any, in this revision shall stand closed. No costs.

M.SEETHARAMA MURTI, J

17th November 2016
Ajr