

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

C.R.P. No.1521 of 2016

ORDER :

The revision petitioner is the defendant in O.S No.174 of 2014 and the revision respondents are plaintiffs. The suit is for bare injunction on the file of the Principal Junior Civil Judge, Punganur. After service of summons, the defendant/revision petitioner putforth his appearance and filed I.A. No.591 of 2014 under Order VII Rule 11 C.P.C to reject the plaint as barred by law which is covered by the impugned contested order of the lower Court dated 09.02.2016, dismissing said application by holding that it is left open from filing of written submissions to take such defence on maintainability also and if necessary as a preliminary issue to decide. Impugning the same, from the revision grounds vis-à-vis oral submissions, it is the submission of the learned counsel for the revision petitioner that the trial Court did not properly appreciate the facts of the lis and the legal bar to maintain a civil suit, that too before a Junior Civil Judge despite the Andhra Pradesh Religious Institutions and Endowments Act, 1987 (Act 30/ 1987), defines the word 'Court' under section 2(8)(ii) as 'Senior Civil Judge' or the like and not the 'Junior Civil Judge'.

2) Whereas, it is the submission of the learned counsel for the revision respondents/ plaintiffs that the order of the

lower Court holds good and at best, it is only for any return of plaint for presentation before the Senior Civil Judge after filing of written statement and not a ground thereby for entertaining the revision and hence to dismiss the revision.

3) Heard and perused the material on record.

4) Undisputedly, it is an endowment property. The plaintiffs are the hereditary archakas of the temple. The defendant is only an ex-trustee and now not even continuing as a trustee and therefrom he has no right to interfere with the affairs, but for if at all as a person interested within the meaning of Section 2(18) of the Act to approach the A.P. Endowments Tribunal since functioning and beyond that he has no right to interfere with the archaka rights including the enjoyment of properties earmarked if any. Thereby, on facts, plaintiffs might have a strong case against the defendant to seek for injunction to prevent his illegal interference alleged. However, as per Section 2(8) of the Act 30/87, Court is since defined as only Senior Civil Judge (Subordinate Judge) and not a Junior Civil Judge, the learned Junior Civil Judge can return the plaint for presentation before the learned Senior Civil Judge, if same is otherwise maintainable before a regular and common law Court as a suit of civil nature under Section 9 C.P.C. In fact, Section 162 of the Act as per the Amended Act, 2007 (33/2007 with effect

from 03.01.2008) by incorporation of the provision confers jurisdiction to the Endowments Tribunal to be constituted to determine any dispute, question or matter relating to a charitable institution, Darmadayam, Religious charity, Religious Endowments, Religious institution or any institution as defined in the Act pursuant to the provision, the Government constituted the Endowments Tribunal and same is functioning and for the entire area of the State of Andhra Pradesh at Pedakakani of Guntur District. In this regard, this Court in deciding a similar issue as to a civil suit or a claim before the Wakf Tribunal that sustains as per Sections 83 and 85 of the Wakf Act, 1995 amended by Act, 2013 answered in C.R.P. No.5844 of 2011, dated 07.09.2016. Thereby the impugned order of the lower Court is unsustainable.

5) In the result, the revision is allowed to the extent by remanding the matter to the lower Court to re-determine the issue with reference to the law and return the plaint therefrom for presentation in proper Court/Tribunal. There shall be no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

28.10.2016
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