

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P.No.5593 OF 2016

AND

C.R.P.No.5598 OF 2016

COMMON ORDER :

These two revisions are arising out of the orders dated 14.09.2016 of the II Senior Civil Judge, Hyderabad, passed in I.A.Nos.284 and 285 of 2016 in O.S.Nos.2089 of 2012 and 782 of 2014 which are the applications filed to reject the plaint invoking Order VII Rule 11 read with Section 151 of the Code of Civil Procedure.

The contentions in the applications maintained to reject the plaint were that the plaintiff of the two suits no other than the landlord of the revision petitioner earlier maintained O.S.No.2702 of 2010 for eviction and there was accrued cause of action if at all to claim damage for use and occupation and the same is not asked therein, but for maintained the subsequent suit O.S.No.2089 of 2012 for the period commencing from suit filed in O.S.No.2702 of 2010. O.S.No.782 of 2014 is maintained further for alleged causing of damage to the premises and that could have been asked earlier like in other suit in O.S.No.2702 of 2010 itself and thereby the two subsequent suit claims are barred by Order II Rule 2 CPC. Impugning said separate orders dated 14.09.2016, the present revisions are maintained.

Heard before admission and before notice and perused the material on record.

Now the point for consideration is:

Whether the suit claim is barred by non availing of cause of action in the earlier lis from Order II Rule 2 C.P.C. or not is a mixed question of fact and law and cannot be construed to reject the plaint even by invoking Order VII Rule 11(d) C.P.C. though it speaks rejection for bar under any law as it is a mixed question of fact and law?

In fact,, once the plaint averments show accrual and existence of cause of action to the lis and its maintainability that is enough to number the plaint and basically there is nothing to say that the suit claims are frivolous and fraudulent. The claim of reliefs in the three suits are overlapping or barred by Order 2 Rule 2 CPC concerned, that involves mixed questions of fact and law to decide on trial only. It is also left open to consider from the earlier judgment and decree relevant under Section 40 of the Evidence Act, any relief in the earlier suit if granted meantime to that extent to negate in the subsequent suits.

Thus, whatever the observations on merits in dismissing the applications made by the lower Court affecting the rights are set aside, while confirming the order of dismissal, for nothing more by sitting in revision, but for to the above observations.

Accordingly, the revision petitions are disposed of by left open the contest of the revision petitioners as defendants in the suits to raise all available pleas in their written statements and to ask for formulating any specific issues in relation thereto to decide the same on own merits. There shall be no order as to costs.

As a sequel, miscellaneous petitions pending, if any, in the revision shall stand closed.

22.11.2016
kvrn

Dr. B. SIVA SANKARA RAO, J

