

HON'BLE SRI JUSTICE R. SUBHASH REDDY

CIVIL REVISION PETITION No.5403 of 2015

ORDER:

This Civil Revision Petition is filed by the plaintiffs in O.S.No.1749 of 2014 on the file of the I Senior Civil Judge, City Civil Court, Hyderabad, aggrieved by the order dated 24.11.2015 passed in C.M.A.No.75 of 2015 by the III Additional Chief Judge, City Civil Court, Hyderabad.

2. O.S.No.1749 of 2014 is filed for perpetual injunction and mandatory injunction with regard to the suit A and B schedule properties. The relief sought in the suit reads as under:

“a. to grant a perpetual injunction directing the defendant or their agents or henchmen or servants or representatives from in any manner preventing the plaintiffs, the existing tenants of the plaintiffs and such other future tenants and other persons authorized by the plaintiffs, from exercising their rights to utilize 50% of the parking space in the stilt floor, being the Northern Bay (North East and North West side) in the stilt floor, more specifically mentioned in the Schedule ‘A’ property and 50% of the parking space in the cellar floor and open areas surrounding the building, more specifically mentioned in Schedule ‘B’ property;

b. to grant a perpetual injunction directing the Defendant or their agents or henchmen or servants or representatives from in any manner preventing the plaintiffs, the existing tenants of

the plaintiffs and such other future tenants and other persons authorized by the plaintiffs, from exercising their rights to utilize 50% of the parking space in the stilt floor, being the Northern Bay (North East and North West side) in the stilt floor, more specifically mentioned in Schedule 'A' property and 50% of the parking space in the cellar floor and open areas surrounding the building more specifically mentioned in schedule 'B' property;

c. to award cost of the proceedings; and

d. to pass such any other relief or reliefs as the court deem fit and proper in the interest of justice.”

3. The total value of the suit is valued at Rs.6 lakhs and court fees is paid thereupon. Perpetual injunction is valued at Rs.3 lakhs and mandatory injunction is also valued at Rs.3 lakhs.

4. During pendency of the suit, petitioners-plaintiffs filed I.A.No.2203 of 2014 under Order 39 Rules 1 and 2 CPC. The trial Court, by order dated 13.02.2015, allowed the said I.A., partly by directing both parties to park their vehicles in the respective area in the parking area of their property as per 50% share. The said order is questioned by way of C.M.A.No.75 of 2015 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad. In the C.M.A., respondent-defendant, pleaded that it is aggrieved by the order only to the extent of 50% of the parking area passed against it, as such appeal is valued

at Rs.3 lakhs and therefore the appeal is filed before the Additional Chief Judge, City Civil Court. In the said appeal filed by the respondent-defendant, petitioners herein filed memo to return the papers on the ground that the said Court lacks jurisdiction having regard to the value of the suit which is valued at Rs.6 lakhs. Such objection is overruled by the III Additional Chief Judge, City Civil Court on the ground that as the respondent-defendant, is aggrieved only to the extent of 50% of the order, as such, notional value adopted by the respondent-defendant at Rs.3 lakhs can be accepted to maintain the jurisdiction. As against the said order, this Civil Revision Petition has been filed.

5. Heard learned counsel for the parties and perused the material on record.

6. It is submitted by the learned counsel for the petitioners that the appeal filed before the III Additional Chief Judge is not maintainable inasmuch as the value of the suit is Rs.6 lakhs and any appeal arising out of the order passed in the I.A., lies only to the Court where regular appeal lies in the event of decree being passed in the suit. It is further submitted that it is not open to take the notional value of the petition claimed at Rs.3 lakhs, to entertain the appeal before the District Court.

7. On the other hand, it is submitted by the learned counsel for the respondent-defendant that as the

respondent-defendant is aggrieved only to the extent of 50% of the order adverse to it, as such, appeal is rightly valued for Rs.3 lakhs and the Additional Chief Judge is having jurisdiction to entertain the C.M.A., filed by the respondent-defendant. In support thereof, he relies on the judgment of the Hon'ble Supreme Court in **State of Maharashtra v. Mishrilal Tarachand Lodha**^[1].

8. From a perusal of the plaint, a copy of which is placed on record, it is clear that the suit is filed for perpetual injunction and also mandatory injunction. As the causes of action are united, in view of the provision under Order II Rule 3(2) CPC, jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit. Further, in view of the provision under Section 106 of CPC, it is clear that where an appeal from any order is allowed, it shall lie to the court to which an appeal would lie from the decree in the suit. Having regard to the fact that the suit is valued at Rs.6 lakhs, in the event of passing any decree in the suit, appeal lies to this Court only. In that view of the matter, it is not open to the III Additional Chief Judge to entertain the C.M.A., only on the ground that the respondent-defendant herein is aggrieved by the adverse order to the extent of 50%, by accepting the valuation of appeal at Rs.3 lakhs. For the purpose of deciding pecuniary jurisdiction for filing

C.M.A., against order passed in I.A., value of the suit is to be taken into consideration. As the value of the suit is Rs.6 lakhs, this Court is of the view that the Court of III Additional Chief Judge, City Civil Court, Hyderabad is not having pecuniary jurisdiction to entertain the C.M.A., arising out of interim order passed in I.A.No.2203 of 2014 in O.S.No.1749 of 2014. Having regard to the facts and circumstances of the case on hand, the decision relied on by the learned counsel for the respondent-defendant in *State of Maharashtra v. Mishrilal Tarachand Lodha* referred supra would not render any assistance in support of the case of the respondent-defendant.

9. For the aforesaid reasons, the order dated 24.11.2015 passed in C.M.A.No.75 of 2015 is set aside, holding that the Court of the III Additional Chief Judge, City Civil Court, is not having pecuniary jurisdiction to entertain the said appeal.

10. In the result, the Civil Revision Petition is allowed and the III Additional Chief Judge, City Civil Court, is directed to return the papers filed in C.M.A.No.75 of 2015 so as to submit the same before the appropriate Court. No order as to costs.

As a sequel, miscellaneous petitions if any pending in the C.R.P., stand closed.

R. SUBHASH REDDY, J

January, 2016
MRR

[\[1\]](#) (1964) 5 SCR 230