

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos. 2385, 2230 & 2359 OF 2016

COMMON ORDER:

All these three Revision Petitions under Article 227 of the Constitution of India are filed questioning the inaction of the trial Court to decide the issue of jurisdiction under Order XIV, Rule 2 (b) of CPC.

2. It is the contention of the petitioners that though the petitioner filed written statement raising several contentions, one among those contentions is that the Civil Court has no jurisdiction in view of bar under Section 151 of the Charitable and Hindu Religious Institutions and Endowments Act, 30 of 1987 (for short 'Act 30 of 1987') and despite filing a petition, under Order XIV Rule 2 (b) of CPC, the trial Court did not take up the petition for hearing and decide the same but framed issues and posted the matter for trial and, therefore, the inaction of the trial Court is now questioned on various grounds.

3. The only contention before this Court is that the petitioner filed a petition, under Order XIV Rule 2 (b) CPC, requesting the Court to decide the preliminary issue regarding bar to the suit created by Act 30 of 1987. The trial Court framed as many as five issues including the preliminary issue regarding maintainability of suit in view of bar under Section 151 of Act 30 of 1987. According to the contention of the petitioner, the Court cannot proceed and decide the other issues unless the jurisdiction of the Civil Court is decided.

4. It is brought to the notice of this Court that the Revenue Divisional Officer passed an order evicting the respondents and others, possession of the property was delivered to the revision petitioners, except the property in possession of the respondents in these revision petitions.

5. Smt Annapurna Sreeram, learned counsel appearing for respondents, contended that the appeals, preferred against the orders of the Revenue Divisional Officer, before the Joint Collector were heard and reserved for orders and are pending as on today and, therefore, the order of the Revenue Divisional Officer has not attained finality, consequently, such issue cannot be decided as a preliminary issue.

6. Order XIV Rule 2 C.P.C obligates the Court to pronounce judgment on all issues and sub rule (2) is an exception to sub rule (1).

“(2) Where issues both of law and of fact arise in the same suit, and then Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to –

(a) the jurisdiction of the Court, or

(b) 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”.

7. Thus, in view of the specific provision, it is obligatory on the part of trial Court to decide the preliminary issue. However, it is the case of the respondents that the appeals, preferred against orders passed by the Revenue Divisional Officer before the Joint Collector, are reserved for orders and are pending as on date. If, for any reason, the Joint Collector allows the appeals, the Civil Court will have jurisdiction to decide the

dispute between the parties. In any view of the matter, it is for the Civil Court to decide any question of law regarding jurisdiction of the Court as a preliminary issue, instead, the trial Court following the procedure contemplated under Order XIV Rule 2 (b) C.P.C settled all issues. Therefore, in these circumstances, it is appropriate to direct the trial Court to decide the preliminary issue regarding the jurisdiction in view of bar under Section 151 of Act 30 of 1987, within two months from today.

8. With the above direction, these Civil Revisions Petitions are disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, pending if any, shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date: 13.10.2016
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