

HON'BLE SRI JUSTICE S.V. BHATT

CIVIL REVISION PETITION No. 3461 OF 2016

ORDER:

The revision is directed against the order, dated 06.06.2016, in I.A.No.567 of 2015 in O.S.No.421 of 2014.

The revision petitioner through the instant application prayed for taking up and deciding preliminary issue, namely, whether the suit is barred by principles of res-judicata. The trial Court through the order impugned in the revision not only dismissed I.A.No.567 of 2015, but recorded finding as follows:

“In view of the above reasons and discussions, I have no hesitation to hold that the suit is alright and do not require any repairs and that the suit is not barred by principles of res-judicata since the relief sought in the both suits is different. Hence, the point is answered in favour of respondent and against the petitioner.”

Hence, the civil revision petition.

I have perused the order impugned in the revision. This Court is of the view that the point framed for consideration, namely, whether this petition is liable to be allowed, does not appear to be correct. Further, the trial Court was required to pronounce whether it is inclined to take up the issue, referred to above, as preliminary issue and decide, but not go into the very merits of the issue and record a finding. This approach is illegal and erroneous. Therefore, the finding recorded in paragraph No.9 of the order impugned is set aside. The trial Court is directed to consider the issue referred to above along with other issues and pronounce the judgment. The suit is directed to be disposed of as expeditiously as possible, preferably, within three months from the date of receipt of a copy of this order.

To the extent indicated above, the order impugned in the revision is modified.

Civil revision petition is ordered. No order as to costs.

Miscellaneous petitions, if any, shall stand disposed of.

S.V. BHATT, J

Date: 09.08.2016
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