

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.29215 OF 2012

ORDER:

This petition is filed for a writ of *Certiorari* calling for the records pertaining to the Judgment and Decree dated 21.03.1989 passed in OS.No.85 of 1989 on the file of Prl.District Munsif, Hyderabad, East & North and proceedings for consequential mutation of names of respondents 6 to 17 in respect of property admeasuring Ac.19.36 guntas in Survey No.50 of Madinaguda Village and land to an extent of Ac.38.4 guntas in Survey Nos.218/7, 218/8 and 218/9 of Kondapur Village, Serilingampally Mandal, Ranga Reddy District and for a consequential direction to set aside the Judgment and Decree and consequential mutation proceedings.

Though the present writ petition is of the year 2012, it has undergone several adjournments. Today, when the matter is listed learned counsel for the petitioner again sought time.

Sri Vedula Venkata Ramana, learned Senior Counsel appearing for the private party respondents submits that the writ petition filed under Article 226 of the Constitution of India for setting the aside the judicial order of the Civil Court is not maintainable. In support of his contention he relied on

the Judgment in **Radhey Shyam and Another v. Chhabi Nath and Others**¹ wherein it was held as follows;

“25. It is true that this Court has laid down that technicalities associated with the prerogative writs in England have no role to play under our Constitutional scheme. There is no parallel system of King’s Court in India and of all the other courts having limited jurisdiction subject to the supervision of the King’s Court. Courts are set up under the Constitution or the laws. All the courts in the jurisdiction of a High Court are subordinate to it and subject to its control and supervision under Article 227. Writ jurisdiction is constitutionally conferred on all the High Courts. Broad principles of writ jurisdiction followed in England are applicable to India and a writ of certiorari lies against patently erroneous or without jurisdiction orders of tribunals or authorities or courts other than judicial courts. There are no precedents in India for the High Courts to issue writs to the subordinate courts. Control of working of the subordinate courts in dealing with their judicial orders is exercised by way of appellate or revisional powers or power of superintendence under Article 227. Orders of the civil court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts. While appellate or revisional jurisdiction is regulated by the statutes, power of superintendence under Article 227 is constitutional. The expression “inferior court” is not referable to the judicial courts, as rightly observed in the referring order in paras 26 and 27 quoted above.

26. The Bench in **Surya Dev Rai** also observed in para 25 of its judgment that distinction between articles 226 and

¹ (2015) 5 Supreme Court Cases 423

227 stood almost obliterated. In view thereof, observation that scope of Articles 226 and 227 was obliterated was not correct as rightly observed by the referring Bench in para 32 quoted above. We make it clear that though despite the curtailment of revisional jurisdiction under Section 115 CPC by act 46 of 1999, jurisdiction of the High Court under article 227 remains unaffected, it has been wrongly assumed in certain quarters that the said jurisdiction has been expanded. Scope of Article 227 has been explained in several decisions including **Waryam Singh v. amaranth**², **Ouseph Mathai v. M.Abdul Khadir**³, **Shalini Shyam Shetty v. Rajendra Shankar Patil**⁴ and **Sameer Suresh Gupta v. Rahul Kumar Agarwal**⁵. In *Shalini Shyam Shetty* case (SCC p.352, paras 64-67) this Court observed:

“64. However, this Court unfortunately discerns that of late there is a growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in cases of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputed questions of property are involved, writ courts are entertaining such disputes. In some cases the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions.

65. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private

² AIR 1954 SC 215: 1954 SCR 565

³ (2002) 1 SCC 319

⁴ (2010) 8 SCC 329: (2010) 3 SCC (Civ) 338

⁵ (2013) 9 SCC 374: (2013) 4 SCC (Civ) 345

individuals writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority.

66. We may also observe that in some High Courts there is a tendency of entertaining petitions under Article 227 of the Constitution by terming them as writ petitions. This is sought to be justified on an erroneous appreciation of the ratio in *Surya Dev* and in view of the recent amendment to Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999. It is urged that as a result of the amendment, scope of Section 115 CPC has been curtailed. In our view, even if the scope of section 115 CPC is curtailed that has not resulted in expanding the High Court's power of superintendence. It is too well known to be reiterated that in exercising its jurisdiction, High Court must follow the regime of law.

67. As a result of frequent interference by the Hon'ble High Court either under Article 226 or 227 of the Constitution with pending civil and at times criminal cases, the disposal of cases by the civil and criminal courts gets further impeded and thus causing serious problems in the administration of justice. This Court hopes and trusts that in exercising its power either under Article 226 or 227, the Hon'ble High Court will follow the time honoured principles discussed above. Those principles have been formulated by this Court for ends of justice and the High Courts as the highest courts of justice within their jurisdiction will adhere to them strictly."

27. Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226.

28. We may also deal with the submission made on behalf of the respondent that the view in *Surya Dev Rai* stands approved by larger Benches in *Shali*, though reference has been made to *Surya Dev Rai*, the same is only for the purpose of scope of power under Article 227 as is clear from para 3 of the said judgment. There is no discussion on the issue of maintainability of a petition under Article 226. In *Mahendra Saree Emporium*, reference to *Surya Dev Rai*, is made in para 9 of the Judgment only for the proposition that no subordinate legislation can whittle down the jurisdiction conferred by the Constitution. Similarly, in *Salem Advocate Bar Assn.* in para 40, reference to *Surya Dev Rai* is for the same purpose. We are, thus, unable to accept the submission of the learned counsel for the respondent.

29. Accordingly, we answer the question referred as follows:

29.1. Judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution.

29.2. Jurisdiction under Article 227 is distinct from jurisdiction under Article 226.

29.3 Contrary view in *Surya Dev Rai* is overruled.”

In view of the ratio laid down in aforesaid Judgment rendered by the Apex Court, this writ petition is not

maintainable. Accordingly, the writ petition is dismissed. However, this order will not preclude the petitioner from availing alternative remedy as may be available to her under law. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

19.10.2016
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