

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Civil Revision Petition No.23 of 2013
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ORDER:

This civil revision petition under Article 227 of the Constitution of India by the unsuccessful petitioner/defendant is directed against the orders dated 12.12.2012 of the learned I Additional Senior Civil Judge, Ranga Reddy District passed in IA.no.1359 of 2012 in OS.no.1642 of 2009 filed by the defendant under Order VII Rule 10 of the Code of the Civil Procedure, 1908 requesting to return the plaint to the plaintiff on the ground that the trial Court lacked pecuniary jurisdiction to entertain the suit.

2. I have heard the submissions of the learned counsel for the revision petitioner/defendant ('the defendant', for brevity) and the learned counsel for the respondent/plaintiff ('the plaintiff', for brevity). I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

The plaintiff brought the suit against the defendant-M/s. Jumbo Traders for eviction and recovery of vacant and peaceful possession of the plaint schedule mulgi bearing no.20 in Janaki Complex bearing municipality no.3-97 situate at Kukatpalli more fully described in the schedule annexed to the plaint and for other reliefs viz., recovery of arrears of rent, mesne profits (past and future) and costs. The said defendant filed a written statement resisting the suit. During the pendency of the suit, the defendant filed the aforementioned application for return of the plaint. The said IA was resisted by the plaintiff. On merits, the trial Court had dismissed the petition of the defendant. Therefore, the defendant is before this Court.

4. The case of the defendant, in brief, is this:

The suit is coming for cross-examination of PW1. There is no privity of contract between the defendant and the plaintiff. There is no shop no.19 as such. The defendant has its shop at Rani Gunj. The deponent who is representing the present defendant-M/s.Jumbo Traders also represents M/s.Trio Traders. M/s.Jumbo Traders has nothing to do with the claim of the plaintiff. The suit is not independent and has to go along with OS.no.1643 of 2009 as M/s.Trio Traders is carrying on the business, but, not M/s.Jumbo traders. Therefore, the plaint in the suit may be returned for presentation to proper Court as the deponent who had filed the affidavit in support of the defendant's case is representing both the concerns i.e., both the defendants in both the suits. The present suit has no independent status and has to go along with the other suit-OS.no.1643 of 2009 filed against M/s.Trio traders.

5. The case of the plaintiff, in brief, is this:

The petition is not maintainable. The defendant had obtained the suit mulgi no.20 from the plaintiff and is carrying on business in tools/drilling machines. The defendant had initially agreed to pay a sum of Rs.1,500/- per month and the same is payable on or before first of every month in advance. Subsequently, the monthly rent was enhanced to Rs.4,200/- with effect from March, 2008. The defendant had stopped payment of monthly rents from 01.03.2008. After issuance of a notice terminating the tenancy, the present suit for eviction and other reliefs is filed. The allegation that there is no privity of contract between the defendant and the plaintiff is false. The allegation that there is no mulgi no.19 or mulgi no.20 as alleged is false. The defendant is a tenant of the mulgi no.20 having taken it on lease from the plaintiff. In fact, the defendant paid rents up to February 2008. The allegations that present suit is not an independent suit and that the present suit has to go along with the other suit-OS.no.1643 of 2009 filed against M/s.Trio Traders are false. The defendant is not carrying on any business in the schedule mulgi no.20 is false. The defendant is carrying on business in mulgi no.20, that is, the suit schedule mulgi under and name and style of M/s. Jumbo Enterprises. The petition may be dismissed.

6. At the time of enquiry before the trial Court, no documents are exhibited. Having regard to the pleadings of the parties, the trial Court had dismissed the petition. Aggrieved of the said orders, the defendant had preferred this revision.

7. At the hearing, the learned counsel for both the sides advanced arguments in line with the respective pleaded cases of the parties.

8. I have given earnest consideration to the facts and also the submissions, which are made in line with the cases of the parties and which are stated supra. Undeniably, the plaintiff instituted the suit against the defendant for eviction and other reliefs *inter alia* pleading in the plaint that the defendant has taken the suit schedule mulgi on lease on a monthly rent of Rs.1,500/- and that from the month of March, 2008 onwards, the monthly rent payable is Rs.4,200/-. According to the plaintiff, before instituting the suit, a notice terminating the tenancy was also issued. The further case of the plaintiff is that since the defendant had taken the mulgi no.20, that is, the suit schedule mulgi, on lease on monthly rent and is carrying on business under and name and style of M/s. Jumbo Enterprises, the contention of the defendant that there is no privity of contract is false. On the other hand, the case of the defendant in support of his request for return of the plaint to the plaintiff for presentation to proper Court is that there is no privity of contract between the parties and that the deponent who is representing the present defendant-M/s. Jumbo traders is also representing M/s. Trio traders and that M/s. Jumbo traders has nothing to do with the claim of the plaintiff and that there is no mulgi no.19 as such and that the present suit is not an independent suit and has to go along with OS.no.1643 of 2009 filed by the plaintiff against M/s. Trio traders and that since both the suits have to go together, the plaint in the present suit is to be returned to the plaintiff for presentation to proper Court. Though in the prayer stated in the petition it is urged that the plaint may be returned for presentation to proper Court on the ground of pecuniary jurisdiction of the trial Court, the pleadings in the affidavit filed in support of the petition have no relevance to the said prayer.

9. At the hearing, the learned counsel for the defendant has submitted that the present defendant-M/s. Jumbo traders is having a separate sales tax registration and that M/s. Trio traders, another concern of the same deponent herein, who is representing the present defendant, is also having separate sales tax registration. Be that as it may. Whether the defendant had taken the lease from the plaintiff and whether there is jural relationship of landlord and tenant between the plaintiff and the defendant is a complex question of fact and has to be decided only after full fledged trial and cannot be prejudged in this application filed by the defendant for return of the plaint. At this stage, it is not possible to formulate an opinion that the plaint should be returned on the mere allegation that there is no privity of contract, as the disputed question regarding the jural relationship has to be decided only after both the parties adduce evidence in support of their respective contentions, that is, after full fledged trial. Even assuming for a moment that there is some connection between the two suits for any reasons, the defendant cannot ask the plaint to be returned for presentation to proper court and it is for the defendant to make a request to the Court below for either joint trial or simultaneous trial of both the suits. It appears from the submissions that the other suit is also part heard and the evidence of PW1 is being recorded and both the suits are being tried simultaneously.

10. Having regard to the reasons, this Court finds that the petition filed before the trial court is frivolous and misconceived and that the trial Court is justified in dismissing the petition of the defendant and that the revision assailing the order of the trial Court is also misconceived and is liable to be dismissed with costs.

10. Before parting with the case, be it noted that the learned counsel for the defendant relied upon the following decisions.

1. **Devasahayam (dead) by LRs v. P. Savithramma and others** ^[1].

2. **The Church of Christ Charitable Trust & Educational Charitable Society, rep., by its Chairman v. M/s.Ponnamman Educational Trust rep., by its Chairperson/Managing Trustee** ^[2].

The decision in Devasahayam (1st cited) is relied upon in support of the proposition that civil Court derives no jurisdiction only on the basis that the tenant has denied title of the landlord; and, that the civil Court can only derive jurisdiction if the Rent Controller has given a finding as to whether the denial by the tenant is *bona fide* or not as required under the proviso to Section 10(1) of the A.P. Buildings (Rent, Leave and Eviction) Control Act, 1960. As already noted, in the case on hand the question whether there is jural relationship and if so whether the tenancy is governed by the provisions of the Rent Control Act or the provisions of the Transfer of Property Act has to be determined only after full-fledged trial and, therefore, the decision cited is not helpful to the defendant at this stage of the matter, in any view of the matter. Moreover, in this case, the defendant is not denying the title but he is only denying the jural relationship. Hence the decision is not helpful to the defendant.

The decision in **The Church of Christ Charitable Trust** (2nd supra) is relied upon in support of the contention that while scrutinizing the plaint averments, the Court can look into the documents filed with the plaint. There is no dispute with the legal proposition. It is fairly conceded that while considering the request of the defendant for return of the plaint, the Court has to only look into the plaint averments and also the documents, if any, filed with the plaint and which are incorporated by reference in the plaint. Be it noted that this Court having referred to the peculiar facts and the circumstances of the case and the reasons assigned had already held that the petition for return of the plaint is misconceived in the facts and circumstances of the case and that the issues raised by the defendant have to be adjudicated only after full-fledged trial, that is, after both the parties adduced evidence and not at an interlocutory stage and that the issues raised cannot be prejudged in the interlocutory stage. Hence, this decision is also not helpful to the case of the defendant.

11. In the result, the Civil Revision Petition is dismissed with costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

14th June 2016
Vjl

[\[1\]](#) (2005) 7 SCC 653

[\[2\]](#) 2012 8 SCC page 706