

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION No.4091 OF 2016

ORDER:

The petitioner filed I.A.No.696 of 2014 in Society O.P.No.269 of 2008 praying the Court to permit the petitioner to file additional pleadings by submitting the O.P. pleadings in the form of suit plaint with Court fee to avoid inconvenience and multiplicity of proceedings.

2. Shorn of details, the claim of the petitioner – society is that the 1st respondent, who was member of the petitioner - society, illegally sold the property belonging to the society to the 2nd respondent, who is a non-member of the society. Petitioner prayed to declare that the said sale transaction is illegal and void and is not binding on the society. The further case of the petitioner – society is that subsequently, the 2nd respondent sold the very same property to respondents 3 to 16. Having come to know the subsequent sale transaction, the petitioner impleaded respondents 3 to 16. While so, by this petition, petitioner seeks to convert the petition into a regular suit.

3. The Court below has framed the following point for consideration:

“Whether the petitioner/society is entitled to change the entire nature of the petition into a suit?”

4. On appreciation of the rival contentions and relying on the decision of the Hon'ble Supreme Court in **P.A. Ahmmed**

Ibrahim v. Food Corporation of India¹, the Court below rejected the claim of the petitioner and dismissed the petition.

5. The Court below held that in a suit for declaration of title, the issues which are required to be proved are entirely different. Therefore, Court below held that when earlier O.P. was filed against the member of the society, merely because a subsequent sale transaction took place between non-members of the society, the petitioner cannot seek to convert the O.P. into a suit, on entirely different cause of action. The Court below observed that the petitioner sought to introduce a new cause of action, which is not consistent to what was originally sought and therefore, it would cause prejudice to the other side, when particularly the period of limitation is involved.

6. Learned counsel for the petitioner while placing reliance on the decision of this Court in **Chaitanya Mahila Mandali, rep., by its President, Smt. Karpuapu Neeraja v. Punuri Arogyam and another**² would submit that the Court below erred in dismissing the I.A. filed by the petitioner and it is permissible to convert the O.P. into a suit so far as the non-members of the society, who are already arrayed as respondents, are concerned. He further submits that the non-members of the society were already brought on record as respondents and therefore, no prejudice would be caused if the prayer of the petitioner is accepted.

¹ (1997) 7 SCC 39

² 2003 (2) ALT 437

7. The decision relied on by the learned counsel for the petitioner is a case where originally the plaintiff instituted suit on the file of Principal Junior Civil Judge praying for declaration of alleged renewal of registration of the plaintiff organization, fraudulently obtained by the defendant, is void *ab initio* and not valid and binding on the plaintiff and sought for consequential injunction restraining the defendant, her men and agents from in any way interfering with the day to day functioning of the plaintiff's organization in plaint schedule premises. The Principal Junior Civil Judge returned the plaint observing that the appropriate forum is the District Court in view of Section 23 of the Andhra Pradesh Societies Registration Act, 2001 (for short, 'the Act'). The returned plaint was presented before the District Judge, who by observing that the averments made in the plaint do not disclose about any dispute with regard to the members of the society and that the defendant is not a member of the society and therefore the dispute is not a dispute between the members of the society, but it was only regarding renewal of registration, rejected the plaint as not maintainable, since Section 23 of the Act is not attracted.

8. This Court observed that if the District Judge was of the opinion that Section 23 of the Act was not attracted, he ought to have remitted the matter to the Principal Junior Civil Judge but ought not to have dismissed the suit presented before him. This Court further observed that the appellant was under the *bona fide* impression that Section 23 of the Act is applicable. This Court therefore observed that strictly speaking the rejection by the

learned District Judge was not proper. Especially in the light of return of the plaint made by the Principal Junior Civil Judge, the District Judge ought to have directed the appellant to receive the plaint for presentation before the Junior Civil Judge's Court. In view of the peculiar facts of the case, the Court was inclined to pass orders granting liberty to the appellant to question the order passed by the Principal Junior Civil Judge in O.S.No.48 of 2002 returning the plaint.

9. The facts of this case are not similar to the facts of the said case. This Court is of the considered opinion that the said decision does not come to the aid of the petitioner, as it was made in the peculiar facts of that case. Petitioner cannot seek to convert O.P. filed under Section 23 of the Act as suit. Hence, I see no error in the impugned order warranting interference by this Court in exercise of power under Article 227 of the Constitution of India.

10. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, filed in this Civil Revision Petition shall stand closed.

P. NAVEEN RAO, J

Date:15.09.2016

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