

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2570 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the Order Dt. 24.10.2016 in I.A.No.249 of 2016 in O.A.No.529 of 2014 passed by Telangana Endowment Tribunal at Hyderabad, whereby the petition filed under Order VII Rule 11(d) of CPC was dismissed by the Tribunal.

The main contention raised by the petitioner herein, before the trial Court is that earlier proceedings O.A.No.3026 of 2010 was decided finally and the present petition is filed for the same relief and thereby the relief claimed in the present O.A. is hit by Section 11 of CPC and sought to reject the plaint on the same ground.

During hearing, learned counsel for the petitioners, reiterated the contentions raised before the Tribunal. However, the question raised before this Court is no-more *res integra*, in view of the law declared by the Apex Court in *Vaish Aggarwal Panchayat v. Inder Kumar*¹, wherein the Apex Court relying on the earlier judgment in *V. Rajeshwari v. T.C. Saravanabava (2004) 1 SCC 551* and other judgments concluded that the plea of *res judicata* is founded on proof of certain facts and then by applying the law to the facts so found.

¹ AIR 2015 SC 3357

The rule of *res judicata* does not strike at the root of the jurisdiction of the Court trying the subsequent suit. It is a rule of estoppel by judgment based on the public policy that there should be a finality to litigation and no one should be vexed twice for the same relief.

It is, therefore, necessary that the foundation for the plea must be laid in the pleadings and then an issue must be framed and tried. A plea not properly raised in the pleadings or in issues at the stage of trial, would not be permitted to be raised for the first time at the stage of appeal. But, based on the facts of that case, the High Court rejected the plea by exercising power under Order 7 Rule 11 (d) CPC on the ground that the subsequent suit is hit by Section 11 of CPC and the order was set aside observing in para No.17 as follows:

“ Coming to the case at hand, we find that the allegations in the plaint are absolutely different. There is an asseveration of fraud and collusion. There is an assertion that in the earlier suit a decree came to be passed because of fraud and collusion. In such a fact situation, in our considered opinion, the High Court has fallen into error by expressing the view that the plea of *res judicata* was obvious from the plaint and set aside the Order”.

Therefore, in view of the law declared by the Apex Court, the plea cannot be rejected as requested by the Petitioners. However, liberty is given to the petitioners to raise the plea of *res judicata* in the Written Statement, if not filed, before the Endowment Tribunal. The Tribunal shall frame an issue with regard to *res judicata*, subject to Order 14 Rule 1 CPC and try and decide the O.A in accordance with law.

With the above direction, this Civil Revision Petition is dismissed.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

Date: 29-06-2017.
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