

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

C.R.P. Nos. 2414, 2600, 2604 and 2612 of 2017

COMMON ORDER:

1) C.R.P.Nos.2414 and 2604 of 2017 are filed, against the common order dated 07.11.2016 passed in I.A.Nos.315 and 338 of 2016 in O.S.No.90 of 2007 on the file of the Junior Civil Judge, Satyavedu, whereas C.R.P.Nos.2600 and 2612 of 2017 are filed, against the common order dated 07.11.2016 passed in I.A.Nos.356 and 366 of 2016 in O.S.No.92 of 2009 on the file of the Junior Civil Judge, Satyavedu.

2) Since the issue involved in all the Civil Revision Petitions filed under Article 227 of the Constitution of India are interconnected, they are disposed of by this common order.

3) The mother of the petitioner by name K.Kannamma filed O.S.No.90 of 2007 against the first respondent in C.R.P.No.2414 of 2017, seeking permanent injunction restraining the defendant, her men, agents, servants or anybody claiming through her from interfering with her peaceful possession and enjoyment over the suit schedule property. Pending the said suit, K.Kannamma died and her legal representatives ie. the petitioner herein and one S.Santhi were impleaded as parties to the said suit. The petitioner herein filed O.S.No.92 of 2009 against respondent Nos.1 to 4 in C.R.P.No.2612 of 2017, for specific performance of the agreement of sale dated 05.11.1986. It is also to be noted that

respondents in C.R.P.No.2612 of 2017 filed O.S.No.116 of 2008 before the Senior Civil Judge, Srikalahasti, seeking declaration of title and permanent injunction in respect of the very same property. The Senior Civil Judge, Srikalahasti, framed five issues in O.S.No.116 of 2008. Issue No.1 relates to agreement of sale dated 05.11.1986, basing on which O.S.No.92 of 2009 was filed. The said suit was decreed on 04.12.2001, declaring that the agreement of sale dated 05.11.1986 is not a valid document. Aggrieved by the same, the petitioner herein filed A.S.No.34 of 2013 which is pending.

4) Since the issue involved in both the suits was already decided by the Senior Civil Judge in O.S.No.116 of 2007, the defendants in the suits filed applications to dismiss the suits as hit by principles of *res judicata*. The plaintiffs also filed applications under section 10 of C.P.C., to stay the trial of the suits, till the final disposal of A.S.No.34 of 2013 on the file of the V Additional District Judge, Tirupati. The trial Court allowed the applications filed by the defendants and dismissed the applications filed by the plaintiffs. Challenging the same, all the civil revision petitions came to be filed.

5) The question is whether the Civil Revision Petition would lie against an order passed dismissing the suit on the ground of *res judicata*?

6) Before proceeding further, it would be useful to refer to certain provisions of Code of Civil Procedure.

7) Section 2 (2) of the Code defines 'decree':

"2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include-

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default. Explanation.- A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit, it may be partly preliminary and partly final;"

8) Section 96 of the Code provides for appeals from original decree:

"96. Appeal from original decree.-

(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed ex pane.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Cause, when the amount or value of the subject-matter of the original suit does not exceed [ten thousand rupees]."

9) Section 115 of the Code provides for revision;

"115. Revision.-(1) The High Court may call for the record of any case which has been decided by any Court

subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

(a) to have exercised a jurisdiction not vested in it by law, or

b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

(3) A revision shall not operate as a stay of suit or other proceeding before the , Court except where such suit or other proceeding is stayed by the High Court. Explanation.- In this section, the expression "any case which has been decided" includes any order made, or any order deciding an issue in the course of a suit or other proceeding." Order XIV Rule 1 provides for framing of issues:

10) In *RISHABH CHAND JAIN & ANOTHER VS. GINESH CHANDRA JAIN*¹ the Apex Court held that an order dismissing the suit on the ground of Res Judicata does not cease to be a decree on account of a procedural irregularity of non-framing an issue. Referring to provisions of CPC, the Apex Court observed that the impugned order has conclusively determined the rights of the parties with regard to one of the matters in controversy in the suit, viz., Res Judicata. The Apex court further held as under:

¹ (2016) 6 SCC 675

“True, it is not an order passed on framing an issue. But at the same time, there is adjudication on the controversy as to whether the suit is barred by *Res Judicata*, in the sense there is a judicial determination of the controversy after referring to the materials on record and after hearing both sides. The impugned order dismissing the suit on the ground of *Res Judicata* does not cease to be a decree on account of a procedural irregularity of non-framing an issue. The court ought to treat the decree as if the same has been passed after framing the issue and on adjudication thereof, in such circumstances.”

The Apex Court further observed that “What is to be seen is the effect and not the process. Even if there is a procedural irregularity in the process of passing such order, if the order passed is a decree under law, no revision lies under Section 115 of the Code, in view of the specific bar under sub-Section (2) thereof. It is only appealable under Section 96 read with Order XLI of the Code. The order passed by the trial court is a composite order on rejection of the plaint as there is no cause of action and dismissal of the suit as not maintainable on the ground of *Res Judicata*. Both aspects are covered by the definition of decree under Section 2(2) of the Code and, therefore, the remedy is only appeal and not revision even if there is any irregularity in passing the order”.

11) In terms of Section 2(2) of the Code, in case, the court adjudicating the case, conclusively determines the rights of the parties with regard to any one or more or all of the matters in controversy in the suit, the requirement of decree is satisfied. Such determination can be preliminary or final. Rejection of a plaint is deemed to be a decree under Section 2(2) of the Code. In the instant case also, the suits were dismissed on the ground of *res judicata*. The order has conclusively determined the rights of

the parties with regard to one of the matters in controversy in the suit, viz., Res Judicata.

12) In view of the judgment of the Apex Court referred to above, the remedy is only by way of filing an appeal and not a revision. Hence, all the Civil Revision Petitions are dismissed as not maintainable, however giving liberty to the petitioner to file appeals before the appropriate Court, which shall be dealt with in accordance with law. There shall be no order as to costs.

13) As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

18.09.2017
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JUSTICE C. PRAVEEN KUMAR

