

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Civil Revision Petition No.6427 of 2016

ORDER:

This is perhaps one of the classic instances where the trial Court has failed to exercise the jurisdiction which it does have and thereby compelled the plaintiff, who filed suit—O.S.No.195 of 2016 for recovery of pro-note amount, to seek indulgence of the High Court just for a direction to the trial Court to register the interlocutory application filed under Order XXXVIII Rule 5 CPC which was returned by the trial Court on flimsy grounds, which will be presently discussed, even without registering the I.A.

2) The plaintiff filed O.S.No.195 of 2016 on the foot of a promissory note for recovery of Rs.85,493/-. Along with suit, he filed I.A.No. of 2016 under Order XXXVIII Rule 5 CPC praying the trial Court to call for the defendant to furnish security for a specified sum and on his failure to attach the petition schedule property. In the affidavit filed in support of the petition, he stated that the petition schedule property is the ancestral property of the respondent/defendant, inasmuch as, it stood in the name of his grand-mother—Myreddy Narayanamma w/o Kondappa and she and her husband died and father of the defendant also died and the respondent is now enjoying the property as is evident from 1B (ROR) issued by the revenue department and that the petitioner came to know from B.Dattatreya s/o Venganna who is having lands near to the petition schedule lands, that the respondent is trying to alienate his property and if he is permitted to do so, the petitioner cannot realize the

suit debt even if he gets a decree ultimately. On these pleas he sought for interim attachment and also filed the third party affidavit of B.Dattatreya.

3) Be that as it may, the trial Court even without registering the IA took the objection dated 02.12.2016 to the effect that as per IB Namoon the defendant's name and father's name were not tallied and returned the petition. The petitioner represented the petition on 07.12.2016 on the submission that IB (ROR) is in the name of defendant's grand-mother and she is no more and prior to her the defendant's father also died and defendant wantonly not mentioned his name in the revenue records with an intention to sell away the property which is mentioned in the affidavit. The trial Court having not satisfied with the representation, directed the petitioner to produce genealogy Certificate of the respondent as per its endorsement dt.07.12.2016. On 08.12.2016 the petitioner complied with the objection by producing the genealogy tree of the respondent. Again the trial Court returned the application on the very same day on the objection that the genealogy Certificate was not issued by the MRO. Aggrieved by the return of the petition, the plaintiff filed the instant CRP.

4) The main grievance of the petitioner is that when the trial Court registered the suit, it ought to have registered IA also since there were no procedural errors in the said application. It is altogether a different aspect, whether petitioner could convince the Court that the petition schedule property belong to defendant or not. Merely because the

petitioner did not produce the genealogy Certificate issued by the concerned MRO, the trial Court cannot return the petition which was otherwise in order without registering the same. He thus prayed to pass suitable orders.

5) The above facts are the ample manifestation of the trial Court's failure to exercise jurisdiction vested in it. When the trial Court finds petition is otherwise in order, it should have registered the application filed under Order XXXVIII Rule 5 CPC at the first instance and then decided the petition on merits within parameters of Order XXXVIII CPC but returning the petition, without registering the same on the flimsy ground that the genealogy table of the respondent's family was not secured from the MRO, which aspect relates to the proof of petition averments, is quite deplorable and hence deprecated.

6) It is well-known that supervisory jurisdiction under Article 227 of the Constitution is exercised not only for keeping the subordinate courts within the bounds of their jurisdiction but also when the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby. In such instances, the High Court may step into exercise its supervisory jurisdiction. (See *Surya Dev Rai vs. Ram Chander Rai and others*¹).

¹ (2003) 6 SCC 675

7) In the result, this CRP is allowed and the trial Court is directed to register the IA filed by the petitioner under Order XXXVIII Rue 5 CPC without insisting the genealogy Certificate of the respondent's family issued by the MRO and dispose of the said application on merits expeditiously. No costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Dt. 06.01.2017
Murthy

U. DURGA PRASAD RAO, J

