

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1545 of 2015

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is filed by the petitioner challenging the Order dated 26.02.2015 in I.A.No.652 of 2014 in O.S.No.560 of 2013 on the file of the I Additional Senior Civil Judge, Kakinada whereby a petition filed under Order 14 Rule (2)(a) of C.P.C. was dismissed by order dated 26.02.2015.

2. The main contention of the petitioner is that he filed a petition under Order 14 Rule 2(2)(a) of C.P.C. on the ground that the Senior Civil Judge, at Kakinada has no territorial jurisdiction to entertain the suit and as no part of cause of action arose within the territorial jurisdiction of the Court and the allegation made in para 3 of the plaint, the promissory note was executed at Yendamuru is not correct in view of contents of notice dated 16.10.2013 where he categorically admitted that the petitioner borrowed the amount and executed the promissory note at Machilipatnam on 12.02.2012. The respondent only to confer jurisdiction on the Senior Civil Judge's Court, the place of execution was changed and thereby the petitioner requested this Court to decide the territorial jurisdiction of the Court as preliminary issue exercising the power under Order 14 Rule 2(2)(a) of C.P.C.

3. The respondent filed counter denying the material allegations, inter alia, contending that the place of execution of promissory note is Yendamuru which is within the territorial jurisdiction of Senior Civil Judge's Court at Kakinada and that the question of framing additional issue with regard to jurisdiction by exercising power under Order 14 Rule 2(2)(a) of C.P.C. would not arise and he made some misleading statements in the petitions and that the trial Court already framed the issues but no issue with regard to jurisdiction was framed. Therefore, the question of deciding the issue of jurisdiction as preliminary issue by exercising power under Order 14 Rule 2(2)(a) of C.P.C. does not arise and prayed for dismissal of the petition.

4. The trial Court after hearing both the counsel, dismissed the petition on the ground that the trial Court cannot decide the territorial jurisdiction of the Court at this stage as preliminary issue since the pleadings in the plaint disclose that the promissory note was executed at Yendamuru within the territorial jurisdiction of the Senior Civil Judge's Court.

5. Aggrieved by the said order, the present petition is filed by the petitioner under Article 227 of the Constitution of India raising several contentions, mainly on the ground that the trial Court did not consider the scope of order under Order 14 Rule 2(2)(a) of C.P.C. and dismissed the petition which is nothing

but denial of exercise of power under Order 14 Rule 2(2)(a) of C.P.C. Though the matter is at the stage of cross examination of PW-1, issues were framed and additional issue regarding jurisdiction was also framed. But, the trial Court on an erroneous appreciation of law dismissed the petition on the ground that the said issue cannot be decided at this stage.

6. Learned counsel for the petitioner reiterated the same contentions before this Court as urged before the trial Court.

7. According to, Order 14 Rule 2 of C.P.C. the Court to pronounce judgment on all issues.—

(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of Sub-rule (2) pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to--

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue."

The general rule is that the court shall try all the issues and pronounce the judgment on all issues. But under Sub-rule (2) of Rule 2, Order 14, the court is entitled to dispose of the suit on a preliminary issue provided all the requirements stated therein are satisfied. From Sub-rule (2), it is clear that it is only an issue of law going to the very root of the matter affecting the jurisdiction or an issue which creates a bar to the suit by any law for the time being

in force, that can be tried preliminarily postponing the settlement of other issues.

8. Here the question of territorial jurisdiction came up for consideration before the Court and according to the allegations made in the plaint, the place of execution of promissory note is Yendamuru which is within the territorial jurisdiction and limits of Senior Civil Judge's Court. But, in the notice it was averred that promissory note was executed at Machilipatnam which is within the territorial limits of Senior Civil Judge's Court at Machilipatnam. Execution of promissory note is a question of fact and it has to be decided only based on evidence. Even according to Order 14 Rule 2(2) of C.P.C. the Court may dispose of any issue of law only, but the territorial jurisdiction of the court is not purely question of law and when it is the mixed question of fact and law, the court cannot be compelled to answer such an issue treating it as preliminary issue. Therefore, the relief claimed by the petitioner is beyond scope of Order 14 Rule 2(2) of C.P.C. a mixed question of fact and copy of the promissory note also not placed on record to establish the place of execution. However, at this stage, it is not proper to record any finding regarding the place of territorial jurisdiction to try the suit leaving it open to the petitioner to raise such contention during trial.

9. In the result, the civil revision petition is dismissed as it is devoid of merits. There shall be no order as to costs.

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

M. SATYANARAYANA MURTHY, J

Date:25-04-2017.
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