HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition No.1180 of 2018

Order:

Aggrieved by the refusal of the Court below to try two issues as preliminary issues, the 3rd defendant in a suit for recovery of possession and for permanent injunction has come up with the above civil revision petition.

2. Heard Mr. V.V.N. Narasimham, learned counsel for the petitioner.

3. The suit was filed by the respondents 1 and 2 herein seeking the following reliefs:

> "a) to declare that the act of dispossession of the plaintiffs by the defendants 1 and 2 dated 31-01-2008 and the occupation of the 3rd defendant in pursuance of the alleged execution orders passed by the Endowments authority basing on the orders passed by the Chairman, Land Grabbing (Prohibition) Tribunal-cum-District Judge, Krishna, Machilipatnam, in L.G.O.P.No.408/1994 are illegal, unlawful and void and not binding on the plaintiffs;
>
> b) direct the 3rd defendant to put the plaintiffs in possession of the plaint A and B schedule properties respectively;
>
> c) grant consequential permanent injunction restraining the defendants from interfering with the possession of the plaintiffs over the plaint schedule properties;
>
> d) award costs of the suit; and
>
> e) grant all such other relief or reliefs which the Honourable Court deems fit and proper in the circumstances of the case."

4. In the suit, the plaintiffs impleaded the following persons as defendants:

"1. Sri Teki Narasimhacharyulu Educational Trust,
Rep. by its Executive Officer

2. Sri Teki Narasimhacharyulu Trust,
Rep. by its Executive Officer,
Endowments Department, Vijayawada

3. Vijayawada Viswabrahmin Sangham,
Rep. by its President Yeduruvada Veera Brahmam

4. The Asst. Commissioner of Endowments,
Vijayawada

5. The Commissioner, Endowments Department,
Hyderabad."

5. The 3rd defendant filed a written statement contending, *inter alia*, that by G.O.Ms.No.961, Home (Endowments-I) Department, dated 11-5-1965, the provisions of the Hindu Religious and Charitable Endowments Act, 1951 had been extended to the 1st defendant/Trust and that therefore there is a bar of jurisdiction of the Civil Courts and that the suit was also barred by limitation.

6. After perusing the pleadings, the Trial Court framed the following issues for consideration:

"1. Whether the plaintiffs are absolute owners of the A&B plaint schedule properties by virtue of sale deeds dated 11-10-2007 and 07-12-2007 respectively?

2. Whether the plaintiffs are entitled for declaration that of act of dispossession by defendants 1 and 2 against them and occupation of 3rd defendant in pursuance of orders of Chairman, Land Grabbing (Prohibition) Tribunal, Machilipatnam, is illegal, unlawful and void?

3. Whether the suit is barred by limitation?

4. Whether this Court is having jurisdiction to try this suit?

5. Whether the suit is bad for non-joinder of proper parties? and

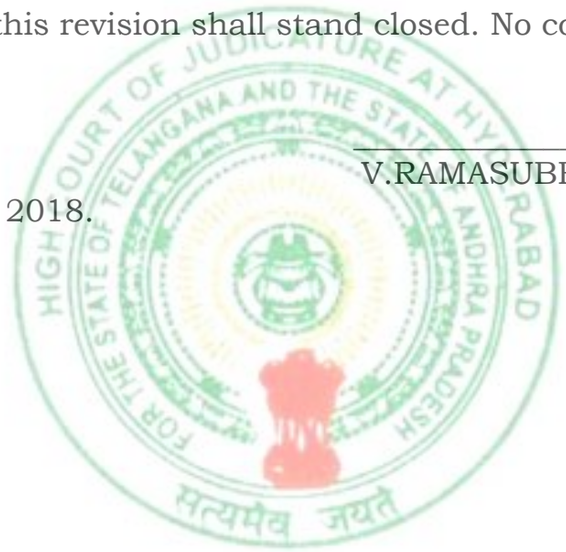
6. If so, to what relief?"

7. Thereafter, the 3rd defendant filed an application in I.A.No.3319 of 2017 under Order XIV, Rule 2 CPC to take up issues 3 and 4 respectively relating to limitation and jurisdiction, as preliminary issues. Misconstruing the said application, as relating to issues 2 and 3 and on a wrong appreciation of the facts, the Court below dismissed the application forcing the petitioner to come up with the above civil revision petition.

8. Insofar as the understanding of the Court with respect to facts is concerned, the learned counsel for the petitioner is right. Instead of directing itself to issues 3 and 4, the Court below directed itself to issues 2 and 3.

9. But on that ground, I do not wish to set aside the order of the Trial Court. If independently examined, it can be seen that after the amendment to the CPC, all issues are to be tried together, notwithstanding that a case may be disposed of on a preliminary issue. This is by virtue of sub-rule (1) of Rule 2 of Order XIV. Though sub-rule (2) of Rule 2 of Order XIV enables the Court to dispose of an issue purely of law as a preliminary issue, if that issue relates to the jurisdiction of the Court or a bar to the suit created by any law for the time being in force, the discretion is left to the Court under sub-rule (2). As a matter of fact, the amendment to Order XIV, Rule 2 CPC came out of experience that in every case, preliminary issues themselves made the parties run from the Trial Court up to the Supreme Court back and forth,

before even a trial could take place. After all, if the trial proceeds and eventually the Court below finds that there was no jurisdiction, a final judgment can be pronounced that it has no jurisdiction. Once the Court finds that it had no jurisdiction, after trial, it need not even record a finding on the other issues, but the evidence will be available on record for the issue of jurisdiction to be tested before the appellate forums. Hence, I find no merits in the civil revision petition. Therefore, it is dismissed. The miscellaneous petitions, if any, pending in this revision shall stand closed. No costs.



V.RAMASUBRAMANIAN, J.

15th March, 2018.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition No.1180 of 2018

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
सत्यमेव जयते

15th March, 2018.
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