

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 3458 OF 2014

ORDER:

This civil revision petition under Article 227 of the Constitution of India is filed challenging the order dated 11-08-2014 in O.S.No. 28 of 2011 on the file of the learned Judge, Family Court – cum – Additional District Judge at Nizamabad (for short, 'the Court below'), whereby it decided the territorial jurisdiction as a preliminary issue and recorded a finding that it has got jurisdiction while observing that the issue of territorial jurisdiction is a mixed question of fact and law and shall be decided only at the end of trial.

2. Aggrieved by the said order, the present revision is filed on the ground that the finding recorded by the Court below at the end of the impugned order is contrary to the observation regarding postponement of decision about territorial jurisdiction and thereby the order is unsustainable. When the question is whether cause of action or part of cause of action arose within the territorial limits of the Court below, it is a mixed question of fact and law and that cannot be decided as a preliminary issue and prayed to set aside the same.

3. During hearing, learned counsel for the petitioners would draw the attention of this Court to para No. 5 of the impugned order and finding and requested this Court to set aside the finding holding that the Court below has got jurisdiction since it is mixed question of fact and law, to be decided at the end of the trial whereas learned counsel for the respondent would contend that since the petitioners themselves raised the issue of territorial jurisdiction as a preliminary issue, the Court below decided the same and passed the impugned order which cannot be interfered with by this Court and requested this Court to dismiss the revision petition.

4. According to Order XIV Rule 2 (2) of the Code of Civil Procedure, 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 the jurisdiction of the Court, or 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. Thus, it means that the Court can try both territorial and inherent jurisdiction as preliminary issue if it finds that it is purely a question of law and not otherwise. In the present facts of the case, the Court below having observed that the plea of territorial jurisdiction based on cause of action is a mixed question of fact and law decided the issue holding that it has got jurisdiction to entertain the suit. When the Court below found that it is a mixed question of fact and law, recording of such finding that it has got territorial jurisdiction to try the suit is premature and erroneous. Therefore, the finding is hereby set aside leaving it open to the Court below to decide the issue of territorial jurisdiction after completion of trial at the time of pronouncing judgment and pass appropriate order.

5. With the above observation, the civil revision petition is allowed. Pending miscellaneous petitions, if any, in this civil revision petition shall stand closed in consequence.

Date: 01-02-2018.

Issue C.C. in three days.

B/O

JSK

M.SATYANARAYANA MURTHY, J.