

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

CIVIL REVISION PETITION NO.5006 OF 2018

ORDER:

This revision, under Article 227 of the Constitution of India, is preferred against the order passed by the XXV Additional Chief Judge, City Civil Court, Hyderabad in I.A. No.2835 of 2014 in O.S. No.1002 of 2014. The Suit, in O.S.No.1002 of 2014, was filed by the 1st respondent herein seeking partition of the suit schedule property. The application, in I.A. No.2835 of 2014, was filed by the respondent seeking deposit of 50% of the rent being collected by the petitioner, from the 2nd respondent, into Court.

In the order under revision the Court below has observed that, while there was a controversy whether the subject property was self-acquired or was available for partition, even according to the petitioner herein at one point of time this property was made available for division among the sharers; in the Suit, the plaintiff had sought for a share in the rental income; while the question of availability of the property for partition would be decided in the main suit, there was reasonable justification in directing the 2nd respondent to deposit 50% of the rent, received for the petition schedule property, in Court from the month of June, 2018.

By the order under revision, the Court below has merely directed the petitioner herein to deposit 50% of the rent, received by them from the 2nd respondent, in Court. No direction has been issued permitting the 1st respondent herein to withdraw the said rent.

Under Article 227 of the Constitution of India, the High Court may interfere in cases of errors of law apparent on record,

(as distinguished from a mere mistake of fact), arbitrary or capricious exercise of authority or discretion, a patent error in procedure, or where it results in manifest injustice. Interference would be justified if the subordinate court/tribunal has come to a conclusion without any evidence or upon manifest misreading of the evidence thereby indulging in improper exercise of jurisdiction. If the evidence on record, on a question of fact, has not been taken into consideration, or if relevant and material documents have been ignored while arriving at the finding of fact by the inferior court/tribunal, such finding must be held to be lacking in factual basis. (**Achutananda Baidya v. Prafulla Kumar Gayen**¹; **Mani Nariman Daruwala Alias Bharucha (Deceased) Through Lrs. v. Phiroz N. Bhatena**²; **Baby v. Travancore Devaswom Board**³).

Findings of fact can also be set aside or ignored if there is no evidence or the finding is so perverse that no reasonable person can possibly come to the conclusion which the Court has come to. (**Estralla Rubber v. Dass Estate (P) Ltd**⁴; **Mohan Amba Prasad Agnihotri v. Bhaskar Balwant Aher**⁵). Mere errors of fact or of law cannot be corrected unless (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby. (**Baby**³). I am satisfied that the order under revision does not suffer from any such patent illegality warranting interference in proceedings under Article 227 of the Constitution of India.

¹ AIR 1997 SC 2077

² (1991) 3 SCC 141

³ (1998) 8 SCC 310

⁴ (2001) 8 SCC 97

⁵ (2000) 3 SCC 190

The supervisory jurisdiction, under Article 227 of the Constitution of India, is to be exercised sparingly, and only in appropriate cases, where the judicial conscience of the High Court dictates it to act lest gross failure of justice or grave injustice occasion. Care, caution and circumspection needs to be exercised when this jurisdiction is sought to be invoked during the pendency of any Suit or proceedings in a subordinate court and the error, though calling for correction, is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition, invoking the supervisory jurisdiction, would obstruct the smooth flow and/or early disposal of the Suit or proceedings. The High Court may feel inclined to intervene where refusal to do so would result in travesty of justice.

(D.N. Banerji v. P.R. Mukherjee⁶).

As 50% of the rent has merely been directed to be deposited in Court, refusal to interfere would not result in travesty of justice. Suffice it to direct that the rental amount, to be deposited each month by the petitioner herein, shall be periodically invested by the Court below in interest bearing fixed deposits with a Nationalised Bank. The proceeds of such fixed deposit shall be subject to the result of the Suit. The Civil Revision Petition is disposed of accordingly. The miscellaneous petitions pending, if any, shall stand closed. No costs.

(RAMESH RANGANATHAN, J)

Date: 05.10.2018

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⁶ AIR 1953 SC 58

