

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.358 of 2019

ORDER :

This Civil Revision Petition is filed assailing the order dt.30.01.2019 passed in I.A.No.628 of 2018 in O.A.No.603 of 2012 on the file of Telangana Endowments Tribunal, at Hyderabad.

2. The petitioners herein are respondent nos.4 to 8 in the above O.A.

3. The said O.A. was filed by the 1st respondent herein against the petitioners and others under Section 87(1)(h) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (**for short, 'the Act'**) to declare that she is a member of the founder's family of Sri Bagya Lakshmi Temple, Charminar, Hyderabad, and to set aside the declaration given in favour of petitioners in proceedings No.E/1424/1998 dt.24.11.1998 by the Assistant Commissioner of Endowments, Hyderabad as confirmed by the Regional Joint Commissioner of Endowments, MZ-III, Hyderabad passed in R.P.S.No.32 of 1998 and 5 of 1999 by a common order dt.30.10.2000.

4. In the said O.A., the 1st respondent contended that she is the successor in interest and daughter of Mahant Ram Chandra Das who was the original founder of the subject-Temple under a Will executed in her favour by him. She contended that he was the founder-Trustee

indicated in Column No.4 in Section 43 Register as hereditary Trustee who was also founder of the Temple, and she is entitled to be declared as a member of the founder's family of the said Temple. She contended that petitioners herein had disputed her claim as successor of the Sri Mahant Ram Chandra Das intend to prevent her from drawing the amounts from the Bank accounts.

5. The petitioners filed counter-affidavit opposing the claim in the O.A. and relying on order dt.24.11.1998 of the Assistant Commissioner of Endowments, Hyderabad declaring that they are members of the founder's family of the Sri Mahant Ram Chandra Das which was confirmed by the Regional Joint Commissioner of Endowments, MZ-III, Hyderabad passed in R.P.S.No.32 of 1998 and 5 of 1999, through a common order dt.30.10.2000. The petitioners contended that in WP.No.3024 of 2001 the order dt.30.10.2000 passed in R.P.S.No.32 of 1998 and 5 of 1999 was challenged, but the said Writ Petition was withdrawn and liberty was obtained from the High Court to file a fresh O.A. by the 1st respondent. They also contended that the said order passed in the Writ Petition did not give any cause of action to the petitioner to maintain the O.A., and therefore, she cannot maintain the present O.A.No.603 of 2012.

6. It appears that the petitioners had initially filed I.A.No.396 of 2017 under Order VII Rule 11 (d) of Civil Procedure Code, 1908 stating that the O.A. should be rejected in the light of the decision of this Court in **Vallabharayeswara Swamy Temple vs. Bellamkonda**

Venkata Subrahmanya Sarma¹ reading down Section 87(1)(h) of the Act as being applicable only to Institutions and Endowments, which came into existence after the commencement of the Act.

7. After contest, it appears that the said I.A. was dismissed on 30.08.2017, opining that without the trial being conducted the rejection of the O.A. cannot be made.

8. Thereafter, the petitioners filed I.A.No.628 of 2018 under Order VII Rule 11 read with Section 151 of Civil Procedure Code, 1908 stating that there is no cause of action for the 1st respondent to file the O.A., and she has no *locus standi* to maintain it, because the said O.A. is hit by principle of *res judicata*. They contended that petitioners had been declared as members of the founder family and as children of Sri Raja Mohan Das, who was declared as a founder member of the said temple on 17.12.1996 who died on 17.05.1998; that the 1st respondent had filed two Revisions, viz., R.P.S.No.32 of 1998 against the order dt.17.12.1996, declaring Sri Raja Mohan Das as the founder member of the subject Temple, and R.P.S.No.5 of 1999 challenging the order dt.24.11.1998, declaring the petitioners as members of the founder family as children of late Sri Raja Mohan Das; that both the Revisions were dismissed on 30.10.2000 by the Regional Joint Commissioner, Endowments, Hyderabad; that the 1st respondent challenged the same in WP.No.3024 of 2001, but later withdrew it and it was dismissed on 24.07.2012; that the 1st respondent did not question the order passed in

¹ 2014 (5) A.L.T. 501

proceedings No.E/2471/1998 (Old No.E/1424/1998 dt.24.11.1998) wherein the 1st respondent's claim to declare her as member of the founder family was rejected, and the said order had become final; and therefore, the present O.A. to declare her as a member of the founder family is hit by principles of *res judicata*, and is not maintainable. Other contentions on the merits of the claim of the 1st respondent were also raised.

9. This application was opposed by the 1st respondent who contended that it is not maintainable in law and is liable to be dismissed. It is contended that the petitioners were trying to stall the proceedings in the O.A. from time to time by filing applications of this nature, and their only intention seems to be to delay the proceedings. She denied that the present O.A. is barred by the principle of *res judicata*. She also contended that petitioners had already filed a petition under Order VII Rule 11, i.e., I.A.No.396 of 2017 and cannot maintain a second application for the same relief on a different ground of *res judicata*.

10. By order dt.30.01.2019, the Court below dismissed the said application. After referring to Order VII Rule 11 of Civil Procedure Code, 1908, it observed that it does not say that the plaint is liable for rejection if it is found that it is hit by principles of *res judicata* and the term '*barred by any law*' occurring in Order VII Rule 11 (d) would not cover principles of *res judicata*. It observed that though a plaint can be rejected on the ground that it did not disclose a cause of action,

in the instant case, the contents of the O.A. indicate a cause of action by referring to Order dt.24.07.2012 passed in WP.No.3024 of 2001, and the petitioners cannot, therefore, contend that there is no cause of action disclosed in the O.A. It also observed that plea of *res judicata* is a defence set-up by the petitioners in the O.A., and rejection of plaint cannot be based on the defence of petitioners in the O.A. It also referred to the decision of the Supreme Court in **Vaish Agarwal Panchayat vs. Inder Kumar and others**², and held that *res judicata* cannot be a ground for rejection of the plaint under Order VII Rule 11 of Civil Procedure Code, 1908, since the concept of *res judicata* involves mixed question of law and facts and requires not only examination of plaint but also other evidence. The Tribunal held that allegations and counter-allegations raised by the parties before it while submitting arguments can be decided effectively only after a full-fledged trial and the petitioners have filed this application only to avoid cross-examination of PW.1.

11. Assailing the same, the present Civil Revision Petition is filed.

12. The counsel for petitioners sought to contend that the approach of the Court below in not entertaining the application under Order VII Rule 11 on the ground of bar of the suit by *res judicata*, cannot be countenanced in view of the decision of the Supreme Court in **Dadu Dayalu Mahasabha, Jaipur (Trust) vs. Mahant Ram Niwas and**

² AIR 2015 SC 3357

another³. He pointed out that in the facts of the said case, the Supreme Court upheld the decision of the Trial Court in refusing to entertain a Civil suit by applying the bar of principle of *res judicata* contained in Section 11 of Civil Procedure Code, 1908; and in the instant case also, the said principle ought to be invoked. He also contended that in the instant case the principle of *res judicata* is not a mixed question of law and fact, but is only a question of law.

13. Sri Kishore Rai, counsel appearing for 1st respondent, on the other hand refuted the above contentions and supported the order passed by the Court below. He specifically contended that the second application under Order VII Rule 11 cannot be maintained, and the intention of petitioners is only to drag on the proceedings in the O.A. instead of proceeding with the trial before the Tribunal. He placed reliance on the decision of the Supreme Court in **Vaish Agarwal Panchayat** (2 supra).

14. I have noted the contentions of both sides.

15. It is no doubt true that in **Mahant Ram Niwas** (3 supra), the Supreme Court had upheld the decision of the Trial Court which rejected a plaint by applying the principle of *res judicata* by observing that Section 11 of Civil Procedure Code, 1908 bars the jurisdiction of the Court in terms of Section 12 of Civil Procedure Code, 1908 and observed that once it is held that issues which arise in the subsequent

³ (2008) 11 S.C.C. 753

suit were directly and substantially in issue in the earlier suit, Section 11 of Civil Procedure Code,, 1908 would apply.

16. However, in **Vaish Agarwal Panchayat** (2 supra), the Supreme Court has taken a different view. It relied upon the decision in **V. Rajeshwari v. T.C. Saravanabava**⁴ wherein the Court had held that principle of *res judicata* does not strike at the root of jurisdiction of the Court trying the subsequent suit. It then quoted another decision in **Kamala and others vs. K.T. Eshwara SA and others**⁵ that the principle of *res judicata*, when attracted would bar another suit in view of Section 12 of the Court; and in a question involving a mixed question of law and fact, it may require not only examination of the plaint but also other evidence, and the order passed in the earlier suit may be taken up either as a preliminary issue or at the final hearing. But the said question cannot be taken at that stage.

17. Though the decision in **Mahant Ram Niwas** (3 supra) was not referred to therein, the fact remains that in **Vaish Agarwal Panchayat** (2 supra) a view appears to have been taken that rejection of the plaint cannot be made on the ground of principle of *res judicata*, because principle of *res judicata* would involve mixed questions of law and fact which require not only examination of plaint but also other evidence.

⁴ (2004) 1 S.C.C. 551

⁵ (2008) 12 S.C.C. 661

18. In the instant case, it would involve examination of the order passed in the Writ Petition No.3024 of 2001 as well as order in proceedings No.E/1424/1998 dt.24.11.1998, re-numbered as E/2471/98 of the Assistant Commissioner of Endowments, Hyderabad dt.24.11.1998.

19. Therefore, I do not find any error of jurisdiction in the order passed by the Court below refusing to reject the O.A. on the ground that it is barred by principle of *res judicata*.

20. Accordingly, the Civil Revision Petition fails, and it is dismissed. No order as to costs.

21. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 20.02.2019

Ndr/*