

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

C.R.P.Nos.1050, 1051, 1675 & 1676 of 2022

COMMON ORDER:

Since the issue raised in all these Civil Revision Petitions is one and the same, all these Civil Revision Petitions are being heard together and disposed of by way of this common order.

2. For the sake of convenience, the facts in C.R.P.No.1051 of 2022 are hereunder discussed:

3. C.R.P.No.1051 of 2022 is filed to suspend the operation of the order dt.15-02-2022 passed in I.A.No.218 of 2021 in O.S.No.182 of 2006 on the file of the Court of X Additional District Judge (FTC), Ranga Reddy District, at L.B.Nagar, pending disposal of the Revision Petition.

4. Heard Sri D. Prakash Reddy, learned Senior Counsel representing Sri Kakara Venkata Rao, learned counsel for the petitioners and Sri Madan Mohan Rao, learned Senior Counsel

representing Sri Yadaiah Jetti, learned counsel for the respondents.

5. It has been contended by the petitioners that O.S. No.182 of 2006 is filed by respondent Nos.13 to 16 for partition of the property and the petitioner is the 40th defendant in the suit. When the partition suit i.e. O.S. No. 182 of 2006 was pending on the file of X Additional District Judge, Ranga Reddy, the respondents 1 to 12 have filed an application under Order VII Rule 11 CPC for rejection of plaint and the said application was numbered as I.A.No.218 of 2021 in O.S.No.182/2006 and the respondent Nos.1 to 12 have not impleaded the petitioner herein stating that defendant Nos.1 to 26, 33 to 40, 42, 48 to 50 and 60 to 63 are not necessary parties and the X Additional District Judge without giving any opportunity to the petitioner had dismissed the suit by allowing the I.A. No. 218 of 2021 preferred by the respondents Nos.1 to 12 vide orders dated 15.02.2022.

6. Learned counsel for the petitioners had contended that every party to a partition suit is entitled for some share as the partition suit is filed to partition the family property and also the

interest of the petitioner is involved in the partition suit. Being defendant No.40, the petitioner had also an interest and stake in the said partition suit preferred by respondents 13 to 16 and the Court below, without giving any opportunity has mechanically entertained the petition preferred by the respondent Nos.1 to 12 and rejected the plaint by allowing the application filed under Order VII Rule 11 CPC..

7. Learned counsel for the petitioners had further contended that this Court under Article 227 of the Constitution of India has power to set aside the illegal orders passed by the Court below in I.A. No. 218 of 2021 in O.S. No. 182 of 2006 dt.15.02.2022 by exercising the powers of superintendence over the Court below. Learned counsel for the petitioners had further contended that the issue of exercising powers under article 227 were considered by the catena of judgments of the Supreme Court where the principles of natural justice are violated and in the instant case, admittedly, the court below has not given any opportunity to the petitioners before passing orders in I.A. No. 218 of 2021 in O.S. No. 182 of 2006 dt.15.02.2022 to the

petitioner though there is an alternative remedy of preferring an appeal under the CPC. When the principles of natural justice are violated, the petitioner can approach the High Court under Article 227 of the Constitution of India and can entertain a Revision.

8. Learned counsel for the petitioner had relied upon a judgment of the Supreme Court in the **State of Uttar Pradesh v. Mohammad Nooh**¹ and contended that as a when there is any violation of principles of natural justice, Writ Petition is maintainable even though an alternative remedy is available.

9. Learned counsel for the petitioner had further relied upon the judgment of the Supreme Court reported in **Suryadev Rai v. Ram Chander Rai and others**² and contended that this Court can exercise its power under Article 227 of the Constitution of India and set aside the orders passed by the Court below as this is an error manifest and apparent on the face of the proceedings as no notice was given to the petitioner by the Court below before adjudicating the I.A. preferred by the respondent Nos.1 to 12.

¹ AIR 1958 SC 86

² (2003) 6 S.C.C. 675

10. Learned counsel for the petitioner had further relied upon the judgment of the Supreme Court reported in **Shalini Shyam Shetty and another v. Rajendra Shankar Patil**³ and contended that this Court can interfere with the orders of the Court below in exercise of its power under Article 227 of the Constitution of India while appreciating that there is a patent perversity in the orders of the Tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

11. Learned counsel for the petitioner had further relied upon a judgment of the Supreme Court reported in **Rajendra Diwan v. Pradeep Kumar Ranibala and another**⁴ and contended that the High Courts can exercise their extra ordinary power of superintendence of the Court below under Article 226 and 227 of the Constitution of India, and can interfere with the orders passed by the Court below to the cases of patent error of law which goes to the root of the decision; such as perversity;

³ (2010) 8 S.C.C. 329

⁴ (2019) 20 S.C.C. 143

arbitrariness and/or unreasonableness; violation of principles of natural justice.

12. Learned counsel for the petitioner had further relied upon the judgment rendered by the A.P. High Court reported in **D.Raja Ahmed v. Pacha Bi**⁵ and contended that even the Mohammedans also has a joint family concept and as a legal arrangement, the Mohammedans are also following the joint family concept and the Mohammedans live and trade together and to acquire properties together and there is nothing contrary in law that Mohammedan adult male members of a family carrying on the trade for the benefit of all the family members including the minors and females. The Courts have upheld such legal arrangements and the legal consequences as in law followed from them, when an adult male member holds the assets and carries on the business on behalf of all the family members. Section 23 (f) and 88 and 90 of the Trusts Act are applicable to those cases also and contended that though the parties to the litigation are Mohammedans, the joint family concept is not strictly applicable

⁵ 1969 (1) An.WR 255

but the Courts time and again have been accepting the concept of Mohammedans joint family and the practice which is being adopted by the families of Mohammedans were recognized by a Division Bench of this Court in the above said judgment.

13. Learned counsel for the petitioner had relied upon a judgment rendered by the learned Single Judge of this Court in **Shahnaaz Fatima v. Noorul Hussain and Others**⁶, wherein the learned Single Judge held that whenever there is an error manifest and operates on the face of proceedings, this Court can interfere under Article 227 of the Constitution of India.

14. Learned counsel for the petitioner had further relied upon a judgment rendered by the Madhya Pradesh High Court reported in **Munnalal Kesharwani v. Ramwati Mishra**⁷, and contended that whenever there is a miscarriage of justice, the High Court can interfere under Article 227 of the Constitution of India.

⁶ 2019 (1) ALD 520

⁷ 2011 Law Suit (MP) 1294

15. Learned counsel for the petitioners had contended that since the respondent Nos.1 to 12 have stated in I.A.No.212 of 2021 in O.S.No.182 of 2006 that the petitioner and other respondents are not necessary parties, the suit itself was adjudicated wherein the I.As. preferred by the respondent Nos.1 to 12 were allowed and rejected the plaint without hearing the petitioners and the petitioners have got interest in the partition suit preferred by the respondent Nos.13 to 16.

16. Therefore, the order passed by the Court below is having error on the face of the record and manifestly illegal. This court should interfere with the orders passed by the Court below and set aside the orders passed in I.A. No. 218 of 2021 in O.S. No. 182 of 2006 dated 15.02.2022 and allow the Civil Revision Petition.

17. Learned counsel for the respondents had contended that the respondent Nos.1 to 12 have filed an application under Order VII Rule 11 CPC contending that the suit is not maintainable as the parties are Mohammedans and the concept of joint family property would not be there and the Court below has

rightly considered the entire case and held that the suit is not maintainable and allowed the I.As. preferred by the respondent Nos.1 to 12.

18. Learned counsel for the respondents had further contended that the order passed by the Court below in I.A. No. 218 of 2021 in O.S. No. 182 of 2006 dt.15.02.2022 is a decree under section 2 (2) of CPC and if anybody is aggrieved by a decree passed by the Court below, they have a right of appeal and the respondent Nos.2 to 16 have already preferred an appeal and if the petitioners are aggrieved, they are at liberty to prefer an appeal only but the Revision Petition is not maintainable.

19. Learned counsel for the respondents had further contended that the issue whether the Revision Petition is maintainable against an order passed under Order VII Rule 11 CPC was considered by the Supreme Court in Civil Appeal Nos. 2401-2402 of 2021 dt.20-07-2021 and the Supreme Court held as under:-

“That a rejection of plaint is also a decree and rejection of plaint also falls under decree under section 2 (2)

of CPC and held that an application under article 227 is not maintainable, only an appeal would lie against the orders of rejection of plaint under Order VII Rule 11 CPC.”

20. Learned counsel for the respondents had further contended that the C.P.C. is a complete Code in itself and remedies provided for the petitioners to prefer an appeal as some of the effected persons have already preferred appeal. If the present Revision Petition is entertained under article 227 of the Constitution of India and if any orders are passed, that could be affecting the result of appeals preferred by the effected persons. Without hearing the other respondents, the present Revision Petition under Article 227 of the Constitution of India is also not maintainable.

21. This court having considered the rival submissions made by the parties is of the considered view that the rejection of plaint under Order VII Rule 11 CPC passed by the Court below is a decree within the meaning of section 2 (2) of CPC and there is a right of appeal provided under CPC by the rejection of plaint. The petitioner has filed Vakalat in O.S.No. 182 of 2006 and when the I.As were listed for hearing, the suit also will be listed along

with the I.As which would mean that the petitioners were aware of an application being filed by the respondent Nos.1 to 12 for rejection of plaint under Order VII Rule 11 CPC. When the respondent Nos.1 to 12 are not impleaded the petitioner, the petitioner could have filed the petitions to get impleaded in the I.As. and in respect of contention of the petitioners is concerned in respect of violation of principles of natural justice is concerned, the petitioners being parties in the suit, they were aware as to when the O.S. No. 182 of 2006 was being listed on day to day basis and nothing prevented the petitioner to file a simple application to get impleaded in all the I.As. in O.S. No. 182 of 2006. If the argument of the petitioners is to be accepted, every decree which is filed can be challenged under Article 227 of the Constitution of India on the ground that there is some error apparent on the face of the record and it might lead to chaotic situation. As there is an appeal provided under the CPC and some of the effected persons have already preferred appeal, the petitioners can also prefer an appeal and adjudicate their remedies before the appellate court.

22. Further, when the Court below has exercised the power under Order VII Rule 11 CPC. The judgments relied upon by the petitioner will not come to the rescue of the petitioners because the petitioners were the defendants and they have filed Vakalath in O.S. No. 182 of 2006 which would mean that the defendants were aware as to when the O.S. No. 182 of 2006 was being listed. They could have ascertained as to why O.S. No. 182 of 2006 is being listed and for what purpose it is coming and if they were diligent enough, they would have come to know that I.A. No. 218 of 2021 which was being filed for rejection of plaint under Order VII Rule 11 CPC and the petitioners could have filed applications for impleadment in the said I.A. But no such steps were taken by the petitioner and the petitioners being parties in the suit have filed Vakalat and they were contesting the suit which would mean that they were aware of the proceedings which were going in O.S. No. 182 of 2006 even though the respondents 1 to 12 have not impleaded the petitioners in the present applications seeking rejection of plaint under Order VII Rule 11 CPC.

23. Therefore, this court is not inclined to interfere with the orders passed by the Court below. Accordingly, all the Civil Revision Petitions are dismissed. However, it is made clear that the petitioners can seek their remedies by filing an appeal under the provisions of the Code of Civil Procedure. There shall be no order as to costs.

24. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

Dt. 28.09.2022
kvr/myk