

THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY

CIVIL REVISION PETITION No. 2848 of 2022

ORDER:

Challenging the docket order dated 24.11.2022 passed by the learned Principal District Judge, Sangareddy, in returning C.F.R.(OS).No.4240 of 2022 as not maintainable, the present Civil Revision Petition has been filed.

Learned counsel for the petitioners has stated that the reason given by the trial Court for returning the plaint at the threshold is that the petitioners have not sought permission for withdrawing O.S.No.238 of 2018 on the file of Principal District and Sessions Judge, Sangareddy, against the respondent Nos.9 and 10 in respect of 'C' schedule property. The learned counsel has stated that the earlier suit, O.S.No.238 of 2018, was filed for partition whereas the present suit is the one for declaration. Moreover, O.S.No.238 of 2018, which was filed for partition, was compromised before the Lok Adalat and at the time of compromise, as the defendant Nos.14 to 16 therein did not come forward, the said suit was dismissed

as withdrawn against the defendant Nos.14 to 16 in respect of 'C' schedule property but the present suit is the one for declaration, therefore, the same is maintainable. Further, it is stated that there was no necessity to take any leave for filing the present suit as the cause of action in both the suits is different. The learned counsel for the petitioners has relied on the judgment of the Hon'ble Supreme Court in **Vallabh Das v. Dr. Madan Lal and others**¹ and the judgment of Madras High Court in **Ramalinga Bajanai Madam by Muthupillai v. Gerart Pappamal and 19 others**².

After perusing the docket order dated 24.11.2022, which is impugned in the present Civil Revision Petition, this Court is of the considered opinion that the earlier suit, O.S.No.238 of 2018 was filed for partition whereas the present suit is filed for declaration of title of the petitioners, therefore, the cause of action in the earlier suit is different from the present suit. Moreover, in **Vallabh Das(1 supra)**, the Hon'ble Supreme Court held at paragraph 5 as under:

¹ 1970(1) Supreme Court Cases 761

² 1998-2-L.W 371

“Rule 1, Order XXIII, Code of Civil Procedure empowers the Courts to permit a plaintiff to withdraw from the suit brought by him with liberty to institute a fresh suit in respect of the subject-matter of that suit on such terms as it thinks fit. The term imposed on the plaintiff in the previous suit was that before bringing a fresh suit on the same cause of action, he must pay the costs of the defendants. Therefore, we have to see whether that condition governs the institution of the present suit. For deciding that question we have to see whether the suit from which this appeal arises is in respect of the same subject-matter that was in litigation in the previous suit. The expression “subject-matter” is not defined in the Civil Procedure Code. It does not mean property. That expression has a reference to a right in the property which the plaintiff seeks to enforce. That expression includes the cause of action and the relief claimed. Unless the cause of action and the relief claimed in the second suit are the same as in the first suit, it cannot be said that the subject-matter of the second suit is the same as that in the previous suit.” (Emphasis added)

Having regard to the above, the docket order under revision dated 24.11.2022 is set aside and the matter is remanded back to the learned Principal District Judge, Sangareddy, to number C.F.R.(OS).No.4240 of 2022 if the same is otherwise in order.

Accordingly, this Civil Revision Petition is allowed.

Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

A. ABHISHEK REDDY, J

9th DECEMBER, 2022.
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