

THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI

Civil Revision Petition No.905 OF 2024

ORDER:

Aggrieved by the order dated 31.01.2024 in I.A.No.352 of 2023 in O.S.No.11 of 2020 (hereinafter will be referred as 'impugned order) passed by the learned Senior Civil Judge at Nagarkurnool (hereinafter will be referred as 'Trial Court'), the defendant has preferred the present Revision to set aside the impugned order.

2. For the sake of convenience, the parties hereinafter are referred to as they are arrayed before the Trial Court.

3. The brief facts of the case, which necessitated the revision petitioner to file the present revision, are that the defendant has filed I.A.No.352 of 2023 under Order VII Rule 10 of the Code of Civil Procedure to return the plaint for submission of the same before the competent court. The brief averments of the affidavit filed in support of the petition in I.A.No.352 of 2023 are as under:

a) The respondent/plaintiff filed at first instance present suit for mere injunction against the petitioner/defendant by valuing the suit relief under notional value as the notional value is to be at the choice of plaintiff. The plaintiff valued the relief for more than Rs.20,00,000/- to attract the jurisdiction of the Court.

b) The respondent/plaintiff earlier filed a suit for injunction against their Sangham before the learned Junior Civil Judge at Kollapur, wherein the respondent/plaintiff could not get *ex parte* injunction, as such, by enhancing the notional value the respondent/plaintiff filed the present suit by showing notional value of more than Rs.20,00,000/- to attract the jurisdiction of the Court by suppressing the fact of earlier suit.

c) The respondent/plaintiff got amended the present suit for declaration of title and recovery of possession from the original status of injunction and valued the suit for Rs.28,35,000/-, out of which the value of the property as per the valuation certificate is Rs.12,00,000/- and for the relief of declaration of title and recovery of possession 3/4th value is Rs.8,00,000/- as per Section 24 (a) of the Court Fee and Suit Valuation Act. When the primary suit value is only Rs.8,00,000/- as per the own pleading of the respondent/plaintiff, he cannot value the subsidiary relief of mandatory injunction for the value of Rs.20,10,000/- which is more than the original value. If the original value is taken into consideration, the Court (trial court) has got no jurisdiction to try the suit. Hence, the petitioner/defendant prayed to return the plaint to submit before the competent court to proceed further.

4. In reply to the petition, the respondent/plaintiff filed counter, the brief averments of which are as under:

i) It is a fact that respondent/plaintiff filed a suit for perpetual injunction in JCJ Court at Kollapur in O.S.No.117 of 2020 against another Sangham but not against the petitioner/defendant Sangamh. There is no fast and hard rule that the notional value for mandatory injunction should not be valued than the value of relief of declaration of title and for recovery of possession.

ii) In the amendment petition itself the respondent/plaintiff put the said valuations and the petitioner/defendant did not contest on the said matter of valuation and the matter of jurisdiction. Finally the Court accepted the respondent/plaintiff's valuation and the jurisdiction valuation in the amendment petition by allowing the amendment petition. The petitioner/defendant did not file any revision against the order of the Court in the amendment petition and the said order passed in amendment petition became final, as such, the petitioner/defendant is estopped from raising the same pleas by way of filing the petition.

iii) The petitioner/defendant filed the same petition on the same pleas along with other pleas for return of plaint under Order VII Rule

10 of the C.P.C., in I.A.No.128 of 2020 and the same was dismissed on 13.02.2023. Hence, once a petition was dismissed under Order VII Rule 10 of the CPC, against the same petition under the same provision is not maintainable and the order passed in I.A.No.128 of 2020 operate as *resjudicata* and hence, the petition is fit to be dismissed.

iv) There is a direction of the High Court of Telangana to dispose of the suit within a period of six months. The said six months expires by December, 2023. The respondent/plaintiff also filed his chief examination affidavit on the last date of hearing i.e., on 09.11.2023 itself to commence the trial. The petitioner/defendant instead of proceeding with the trial of the case, filed this false petition only to drag on the proceedings for a further length of time and by disobeying the direction of the High Court and finally prayed to dismiss the petition.

5. On considering the rival contentions, the Trial Court dismissed the claim petition. Aggrieved by the same, the petitioner/defendant has filed the present Civil Revision Petition to set aside the impugned order.

6. Heard both sides and perused the record including the

grounds of revision.

7. Admittedly, it is the respondent/plaintiff, who has filed the suit initially for perpetual injunction against the petitioner/defendant by valuing the suit notionally for a sum of Rs.20,10,000/- and subsequently the suit was amended for further relief of declaration by showing the value of suit relief for Rs.28,35,000/-.

8. The contention of the learned counsel for the petitioner/defendant is that the respondent/plaintiff filed the suit by suppressing the fact that on the same suit schedule property, the plaintiff already filed a suit in O.S.No.117 of 2020 on the file of Junior Civil Judge at Kollapur against another society, which is also related to petitioner's society. As can be seen from the record, though the respondent/plaintiff earlier filed a suit vide O.S.No.117 of 2020 in respect of suit schedule property, the said suit was against another society but not the petitioner/defendant society. Even as per the contention of the petitioner/defendant, the society against which the respondent/plaintiff filed O.S.No.117 of 2020 was related to their society but not one and the same. Hence, the above said contention does not hold water.

9. The other contention of the learned counsel for the petitioner/defendant is that as per the market value certificate issued by the local Sub-Registrar of Stamps and Registration Department is Rs.8,00,000/-. Therefore, the pecuniary jurisdiction of the Court is not within the jurisdiction of the Court below. On the other hand, the learned counsel for the respondent/plaintiff contended that for determining pecuniary jurisdiction of the court, aggregate valuation of the reliefs sought by the plaintiff shall be considered. The trial Court at paragraph No.19 observed that the purpose of determination of pecuniary jurisdiction of the Court, the aggregate value of the reliefs that were sought by the plaintiff shall be considered and that for the purpose of payment of the court fee, as rightly contended by the defendant, the question of main relief and ancillary relief as envisaged under Section 6 of the Court Fee and Suit Valuation Act will come into picture. It is settled law that it is the nature of relief claimed in the plaint which is decisive of the question of suit valuation. The market value does not become decisive of suit valuation merely because an immovable property is the subject-matter of litigation. The market value of the immovable property involved in the litigation might have its relevance depending on the nature of relief claimed but, ultimately, the valuation of any particular suit has to be decided primarily with reference to the

relief/reliefs claimed. In **Bharat Bhushan Gupta v. Pratap Narain Verma and another**¹ the Honourable Supreme Court observed that it is unquestionable principle of law that a suit for mandatory and prohibitory injunction is not required to be valued at the market value of the property.

10. Now the question is whether the defendant can file a petition by invoking Order VII Rule 10 of the CPC to return the plaint. In **Acharya Pathasala Educational Trust v. Mrs. Rashmi and another**² the High Court of Karnataka observed as follows:

“6. A perusal of the said provision would only indicate that, in the event of suit being presented before the Court which does not have the pecuniary or territorial jurisdiction over the mater, an application could be made under the said provision for return of the plaint to be presented before the appropriate forum, or subject to the provision of Rule 10A of Order VII of the Code of Civil Procedure, when the Court comes to the conclusion on its own motion that it does not have jurisdiction to entertain a particular suit.

7. In the present case, the application is made by the defendant for return of the plaint, which, I am of the considered opinion, cannot be so done by the defendant. The defendant is entitled to take a defence as regards lack of jurisdiction, which would have to be considered by the Court on merits in terms of the applicable law including Section 20 of the Code of Civil Procedure, either after the trial or as preliminary issue which can so permissible under Sub-Rule (2) of Order 14 of the Code of Civil Procedure.

8. In that view of the matter, though not for the reasons stated by the trial Court, for the reason that an application under Rule 10 of Order VII of the Code of Civil Procedure can be maintained only by the plaintiff and not by the defendant, the petition not making out any grounds is required to be and is so dismissed.

¹ 2022 LiveLaw (SC) 552

² 2024 LiveLaw (Kar) 70

9. Liberty is however reserved to the petitioner to seek for treating the issue framed relating to territorial jurisdiction as a preliminary issue, if such an issue has been framed, if not, seek for such an issue to be so framed.”

11. From the above said decision, it is observed that the defendant cannot invoke Order VII Rule 10 of the CPC. But in a recent decision in **Samiulla v. Mohammed Sameer**³ the High Court of Karnataka observed as under:

“10. Yet another submission is made by the learned counsel for respondent that an application under Order VII Rule 10 of the CPC could not have been maintained by the present petitioners/the defendants before the concerned Court. I decline to accept the said submission. Order VII Rule 10 of the CPC reads as follows:

“10. Return of plaint.--(1) 356[Subject to the provisions of Rule 10-A, the plaint shall] at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

[Explanation.--For the removal of doubts, it is hereby declared that a court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.] (2) Procedure on returning plaint.--On returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.”

Order VII Rule 10 of the CPC permits filing of an application for return of plaint. Sub-section (1) of Section 10 permits the concerned Court to return the plaint to be presented before the Court in which the suit should have been instituted. The procedure to be followed on returning the plaint is dealt with under sub- section (2) of Section 10. Order VII Rule 10 of the CPC touches upon the jurisdiction of a Court to have entertained a suit. The question of jurisdiction cuts at the root of the matter, and if the Court has no jurisdiction territorial or otherwise, to entertain a plaint, it cannot. Who brings up the issue before the concerned Court is immaterial, as Order VII Rule 10 of the CPC nowhere indicates that it is only to be filed by the plaintiff and not the defendant. What is brought to the notice of

³ W.P.No.6789 of 2023 (GM-FC) decided on 22.04.2024

the Court qua jurisdiction is what is important and not who brings it. In a given case, a defendant/s has/have a right to file application or even raise an oral objection for raising grounds based on Order VII Rule 10 or Order VII Rule 11 of the CPC. The Court cannot direct the defendant to file a written statement for raising objections, if he does not desire to do so. But if he chooses to do so, it is an altogether a different circumstance, which is not the circumstance in the case at hand.

11. The present application in the case at hand under Order VII Rule 10 of the CPC, is filed by the defendant. Though the Court does not reject the application on the said ground of it being filed by the defendant, since the submission is made, I have deemed it appropriate to consider the said submission and answer it holding that the defendant also has a right to file an application seeking return of the plaint under Order VII Rule 10 of the CPC, for want of jurisdiction of a particular Court, to try the suit. The submission that it is the right of the plaintiff only, stands repelled.”

12. From the principle laid down in the above said decision, it is evident that even the defendant can file a petition to return the plaint by invoking Order VII Rule 10 of the Code of Civil Procedure and such an objection raised by the defendant has to be answered by framing a preliminary issue. But the defendant has not raised the plea of lack of pecuniary jurisdiction at initial stage so as to frame a preliminary issue and answer it. However, the defendant is not precluded to challenge this aspect during the course of trial or at the time of arguments, as it is settled law that question of jurisdiction going to the root of the matter can be raised at any stage of the litigation.

13. It is to be seen that vide common order dated 14.03.2023 in W.P.Nos.296611 and 33097 of 2022 this Court has directed

that O.S.No.117 of 2020 on the file of Junior Civil Judge, Nagar Kurnool to be tried and heard along with O.S.No.11 of 2020 and to dispose of the same within a period of six months from the date of receipt of copy of the order. Furthermore, as can be seen from the pleadings, prior to the amendment of the plaint, the petitioner/defendant has filed I.A.No.128 of 2010 under Order VII Rule 10 of the Code of Civil Procedure and the same was dismissed by the Court on 13.02.2023. The petitioner/defendant filed the present petition on 09.11.2023. It appears that the petitioner/defendant is bent upon dragging the proceedings on one pretext or the other. The respondent/plaintiff alleged to have filed his chief examination affidavit on 09.11.2023. Thus, the suit is coming up for trial. Though the petitioner/defendant filed Writ Appeal No.522 of 2023 against the common order dated 14.08.2023 in W.P.No.29611 of 2022, the said appeal was dismissed as withdrawn. Though the petitioner/defendant filed Writ Appeal No.554 of 2023 against the common order dated 14.03.2023 in W.P.No.33097 of 2022, the said appeal was disposed of on 14.08.2023.

14. The above chronological events discloses that despite

specific orders from the High Court to dispose of both the cases within six months from the date of receipt of copy of the common order in W.P.Nos.296611 and 33097 of 2022, the petitioner/defendant is not coming forward to extend his cooperation in disposing O.S.No.11 of 2020. It is to be seen that if at all the petitioner/defendant has grievance over the pecuniary jurisdiction, he ought to have raised objection in the counter when the respondent/plaintiff has filed petition for amendment of the suit, wherein the valuation of the suit along with the jurisdiction of the Court was clearly mentioned. Furthermore, the prayer in the suit reflects that the suit was a multifarious suit as defined under Section 6 of the Court Fee and Suit Valuation Act. As per Section 6 (1) of the Court Fee and Suit Valuation Act, the plaint, in such a case is chargeable with a fee on the aggregate value of all the relief claimed. The plaintiff has sought for declaration of title, recovery of possession, mandatory injunction, cancellation of registered sale deeds etc. Thus, the relief sought by the plaintiff along with the relief of injunction are not ancillary relief to the main relief of injunction or declaration. Hence, there is no flaw in the valuation of the suit filed by the respondent/plaintiff, as such, there is no need for return of the plaint to any other Court,

more particularly, when this Court has directed the learned trial Court i.e., learned Senior Civil Judge at Nagarkurnool to dispose of O.S.No.117 of 2020 and O.S.No.11 of 2020 within six months from the date of receipt of the copy of the order in W.P.Nos.296611 and 33097 of 2022.

15. On perusal of the impugned order passed by the trial Court, this Court is of the opinion that there is no irregularity or infirmity in the impugned order. In **M/s. Puri Investments v. M/s. Young Friends And Company & others**⁴ the Apex Court observed as under:

“13. There was no perversity in the order of the Appellate Tribunal on the basis of which the High Court could have interfered. In our view, the High Court tested the legality of the order of the Tribunal through the lens of an appellate body and not as a supervisory Court in adjudicating the application under Article 227 of the Constitution of India. This is impermissible. The finding of the High Court that the appellate forum’s decision was perverse and the manner in which such finding was arrived at was itself perverse.”

16. In view of the above facts and circumstances and considering the principle laid down in the above said decision, this Court is of the considered opinion that the trial Court has exercised its discretionary power in passing the impugned order and moreover, the revision petitioners/plaintiffs failed to establish that the impugned order passed by the trial Court

⁴ Civil Appeal No. 1609 OF 2022 (arising out of SLP (C) No. 6516/2019) decided on 23.02.2022

suffers from any irregularity or infirmity. In such circumstances, this Court cannot interfere with the findings of the trial Court by exercising the power under Article 227 of the Constitution of India. Therefore, the Civil Revision Petition is liable to be dismissed.

17. In the result, this Civil Revision Petition is dismissed. Since this Court has earlier directed the trial Court to dispose of O.S.No.117 of 2020 and O.S.No.11 of 2020 within six months from the date of receipt of the copy of the order in W.P.Nos.296611 and 33097 of 2022, this Court is inclined to direct the trial Court to dispose of O.S.No.11 of 2020 and O.S.No.117 of 2020 as expeditiously as possible preferably within three (03) months from the date of receipt of copy of this order. Further, the trial Court shall not be influenced by any of the remarks or observations made by this Court in this order. There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

JUSTICE M.G. PRIYADARSINI

Date: 21.06.2024

Note: LR Copy to be marked.
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