

Judgment Reserved on 17.04.2023

Judgment Delivered on 01.05.2023

AFR

Court No. - 5

Case :- MATTERS UNDER ARTICLE 227 No. - 5967 of 2022

Petitioner :- U.P. Sunni Central Waqf Board

Respondent :- Bhagwan Sri Krishna Virajman And 10 Others

Counsel for Petitioner :- Punit Kumar Gupta, Poorva Agarwal

**Counsel for Respondent :- Prabhash Pandey, Birendra Prasad
Maurya, Kamlesh Narayan Pandey, Pooja Agarwal, Prabhash Pandey**

with

Case :- MATTERS UNDER ARTICLE 227 No. - 5348 of 2022

Petitioner :- C/M Trust Shahi Masjid Idgah

Respondent :- Bhagwan Sri Krishna Virajman And 10 Others

Counsel for Petitioner :- Nasiruzzaman, Fatma Anjum, Sr.

Advocate, Zaheer Asghar

Counsel for Respondent :- Punit Kumar Gupta, Birendra Prasad

Maurya, Kamlesh Narayan Pandey, Pooja Agarwal, Prabhash Pandey

Hon'ble Prakash Padia, J.

1. Heard Shri W.H. Khan, learned Senior Counsel along-with Shri S.F.A., Naqvi, learned Senior Counsel assisted by Shri Punit Kumar Gupta, Ms. Poorva Agarwal and Shri Nasiruzzaman, learned counsel for the petitioner in both the petitions and Mrs. Garima Prasadh, learned Senior Counsel/Additional Advocate General of State of U.P. along-with Ms. Priyanka Swami, Ms. Ritu Bhardawaj, Ms. Pooja Agarwal, Mr. Prabhash Pandey and Mr. Pradeep Sharma, learned counsel on behalf of

contesting respondents namely respondent nos. 1 to 8, Shri Kamlesh Narayan Pandey, learned counsel appearing on behalf of respondent no.10 namely Sri Krishna Janam Bhumi Trust, Mathura, Through the Managing Director and Shri Birendra Prasad Maurya, learned counsel appearing on behalf of respondent no.11 namely Sri Krishna Janam Asthan Sewa Sansthan, Through its Secretary.

2. The above petitions have been filed under Article 227 of the Constitution of India challenging the judgment and order dated 19.05.2022 passed by District Judge Mathura in Civil Revision No. 02/2021 (Bhagwan Sri Krishna Virajman us. UP Sunni Central Waqf Board and others) by which the judgement and order dated 30.09.2020 passed by the Civil Judge (Senior Division), Mathura in Misc. Case No. 176 of 2020 has been set aside. Common questions are raised and thus, both the matters are taken up together and are being disposed of by a common order with the consent of the parties.

3. The brief facts of the case are that a regular Civil Suit was filed on 25.09.2020 by the Respondent nos. 1 to 9 herein/Plaintiffs before the Court of Civil Judge (Senior Division), Mathura claiming right over the property in dispute situated at Katra Keshav Dev measuring 13.37 acres which according to the Plaintiffs is birthplace of Lord Krishna and for removal of the structure standing thereat and prayed for issuing decree in the nature of declaration, mandatory and prohibitory injunction and also for cancelling the alleged fraudulent compromise decree dated 20.07.1973 and 07.11.1974. The following reliefs were sought:

(a) decree the suit in favour of Plaintiffs and against the Defendants, cancelling the judgment and decree dated 20.07.1972 and Judgment and decree dated 07.11.1974 passed in Civil Suit no. 43 of 1967 by Ld. Civil Judge Mathura;

(b) declare that the judgment and decree dated 20.07.1973 and the judgment and decree dated 07.11.1974 and passed in Civil Suit No.

43 of 1967 by Ld. Civil Judge, Mathura is not binding on the Plaintiffs;

(c) Decree the suit for declaration declaring that land measuring 13.37 acres of Katra Keshav Dev shown by letters A,B,C,D and the site plan vest in the deity Lord Shree Krishna Virajman:

(d) Decree the suit for mandatory injunction in favour of the Plaintiffs and against the Defendants no. 1 and 2 directing them to remove the construction raised by them encroaching upon the land shown by Letters No.E,B,G,F in the site plan within the area of Katra Keshav Dev City Mathura and to handover vacant possession to Shree Krishna Janmabhoomi Trust within the time provided by the Hon'ble Court;

(e) Decree the suit for prohibitory injunction restraining defendant No.1 and 2, their workers, supporters, men, attorneys and eerie person acting under them from entering into premises of 13.37 acres land at Katra Keshav Dev, City and District Mathura;

(f) The Hon'ble Court may pass any other decree for which Plaintiffs are found entitled to or which may be necessary to be passed in the interest of justice;

(g) Award the costs of the suit."

4. When the suit was presented before the Civil Judge (Senior Division) on 25.09.2020, the Civil Judge (S.D.), did not register the suit as a civil suit and in turn registered the case as a Miscellaneous case on the ground that the Plaintiff Nos. 3 to 8 are not residents of Mathura whereas the property in question is situated in District Mathura. The Civil Judge (S.D.), instead of registering the suit passed order treating it as Misc. Case No. 176 of 2020 and fixed the next date of hearing on the question of maintainability of suit on 30.09.2020.

5. The Civil Judge (S.D.) dismissed the Misc Case No. 176 of 2020 at the threshold on the ground that the Respondents are devotees /worshippers and if the suit is allowed to be filed, the social and judicial

system will collapse and they do not have a Right to Sue. The operative part of the order dated 30.05.2020 holds as under:

“..8. It is well known that Lord Krishna is the revered deity of Hindu religion and is known as an incarnation of Lord Shri Vishnu. There are innumerable devotees and worshipers of Lord Shri Krishna all over the world, if in this way every devotee and worshiper is allowed to file a case, then the Judicial and social system will collapse. Admittedly, the applicants are not parties to the decree in question, nor are they as trustees. Granting permission to the applicants to file a case on the basis of being merely a devotee does not appear to be just and reasonable and filing a case by a devotee is also not permissible in the eyes of the law.

9. After all the above deliberations, it is concluded that the applicants do not have the Right to Sue for presenting the present case. There is thus, no sufficient ground to register the present case as a regular Suit. Therefore, the Misc. Case deserves to be dismissed.

Miscellaneous case is dismissed. File be consigned Record Room.”

6. The Respondent nos. 1 to 9/Plaintiffs then filed Appeal no. 02 of 2021 before the District Judge Mathura. At this stage, on 16.10.2020, the District Judge issued notice to the Petitioners herein (Defendants in the Suit). The Petitioners herein filed Application No. 66-Ga raising Objection to the maintainability of the Appeal. Meanwhile, the Civil Judge (S.D.) also rejected the application of the Plaintiffs seeking a copy of decree on the ground that the order dated 30.09.2020 had not been passed under Order 7 Rule 11 CPC. Accordingly, vide order dated 18.01.2021, the District Judge held that the order dated 30.09.2020 could not be treated as an order under Order 7 Rule 11 CPC, and therefore Appeal was not maintainable. The Appeal was thus directed to be registered as a Revision Petition consequent to which the same was registered as Civil Revision No. 02 of 2021.

7. While disposing the Revision Petition, the District Judge framed many points on the basis of the arguments raised on behalf of the Petitioners herein (Defendants to the suit) namely:

(i) whether the Revision is maintainable or not against the impugned order dated 30.09.2020?

(ii) Whether a worshipper as the next friend of deity can file suit for the restoration and re-establishment of religious rights of the deity?

(iii) Whether the plaintiffs are entitled to maintain the suit challenging the compromise judgment and decree dated 20.07.1973 and 07.11.1973 passed in Civil Suit No.43 of 1967 by Ld. Civil Judge, Mathura, on the ground of fraud, misrepresentation and collusion?

(iv) Whether the provisions of the Places of Worships (Special Provisions) Act 1991 will be applicable or not?

(v) Whether the impugned order suffers from manifest error of law and the court below has failed to exercise the jurisdiction vested in it by law?

8. The District Judge gave detailed findings on each of the above points and finally set aside the order dated 30.09.2020 by the impugned judgment dated 19.05.2022 holding that the Trial Court had committed illegality and manifest error, thereby directed the Trial Court to hear both the parties and pass appropriate order in light of the observations made by it in the Revision Petition.

9. Learned Senior Counsel for the Respondent nos. 1 to 9 informs that subsequent to the impugned order, the case came to be listed before the Trial Court on 26.05.2022 when the Civil suit was registered as Original Suit No. 353 of 2022 and summons were issued by the trial court fixing 01.07.2022 for filing the Written Statements and framing of issues. Thereafter, this Court by an interim order dated 03.08.2022 in Petition No. 5967 of 2022 stayed further proceedings before the trial court.

10. Pleadings are complete. I have perused the records and heard the parties at length. With the consent of counsel for the parties, the present petition is disposed of finally.

11. Shri W.H. Khan, learned Senior Counsel for the Petitioner in Petition No. 5967 of 2022 has raised the issue of pecuniary jurisdiction of the Revisional Court and has contended that since the valuation of the Plaint is Rs.42,26,230.40/- which is more than Rs.25 lakhs, the revision petition would lie before the High Court. Also, that the District Judge committed a manifest error of law by converting the civil appeal into a civil revision. The learned Senior Counsel further submits that the District Judge has exceeded his jurisdiction in giving findings on merits on the disputed questions of the suit and entered into a realm which is totally beyond his powers.

12. Mrs. Garima Prashad, learned Senior Counsel appearing for the Respondent nos. 1 to 9 contends that the only question before the Revisional Court was whether a regular Civil Suit upon its due presentation before a competent Civil Court can be refused to be registered as a Civil Suit, and instead whether it can be registered and dismissed as a Miscellaneous Case. As per the learned Senior Counsel, there is no provision in Code of Civil Procedure, 1908 (CPC) to consider the Plaint as a Miscellaneous case. The learned Senior Counsel refers to Order IV of the CPC which mandates registration of suit upon due presentation, and Order XIV which provides for framing issues as well as the preliminary issues. It is submitted that the trial court erred in dismissing the suit at the threshold by wrongly framing the question of maintainability of the suit and deciding the same, without even registering the suit itself, and thus, the District Judge was justified in setting it aside.

13. At this stage, regarding the aforesaid submission on behalf of the Respondents, this Court put a specific query to Shri W. H Khan learned Senior Counsel for the Petitioners, to which the Learned Senior Counsel fairly accepted the legal position that no findings on any issue could be

given by any Court of law on any civil suit without first registering it as a civil suit and following the procedure as per law.

14. In response to the issue of lack of pecuniary jurisdiction, it is submitted by Mrs. Garima Prashad, learned Senior Counsel for the Respondents, that no such objection was raised before the District Judge and that the same cannot be raised for the first time before this Hon'ble Court in the jurisdiction under Article 227. Further, Para 83 of the Suit states that the valuation of the suit for the purposes of jurisdiction is only Rs.20 lakhs whereas the figure of Rs.42,26,230.40/- being relied upon by the Petitioners does not find mention anywhere in the Plaint and is sum total of reliefs sought for purposes of Court fee. It is further submitted that when the suit itself was not registered, how could the valuation of the Miscellaneous case be a subject matter of objection in a revision petition. Lastly, it is submitted that in any event, in such a case the Hon'ble High Court would not interfere in its discretionary powers under Article 226 and 227, because even if the Revision for some reason was incompetent, the Revision court had record before it and gave effect to the correct legal position.

15. In response to the various findings by the District Judge given on the merits of case, Mrs. Garima Prashad, learned Senior counsel submits that the same were made in view of the arguments raised before the Revision Court by the Petitioners herein. She submits that these questions also cannot be decided by this Hon'ble Court in jurisdiction under Article 227 and urges that the stay order dated 03.08.2022 be vacated and the Trial Court be directed to proceed with the civil suit in accordance with law.

16. Learned Counsel for the Respondent nos. 10 and 11 adopt the submissions of the learned Senior Counsel for the Respondent nos. 1 to 9.

17. At the outset, a perusal of the record shows that the Civil Suit which was duly instituted by the plaintiffs was wrongly registered as a

Miscellaneous Case by the Civil Judge (S.D.). Order IV of the Code provides for the institution of suits. Rule 1 of Order IV says suit to commence by presentation of plaint. Rule 1(2) of Order IV says every plaint shall comply with the rules in Order VI and VII, so far as they are applicable. Order VI relates to pleadings and Order VII relates to the contents of the plaint. Upon presentation of the Plaint, under Rule 2 of Order IV, the Court 'shall' cause particulars of every suit to be registered. There is no provision in CPC to register any regular suit as a Miscellaneous Case. The Plaintiffs had not filed any application which could be treated as a Misc. Case. The Plaintiffs had filed Suit. The Trial Court treated the Plaint as a Misc. Case and decided a question of maintainability of the suit which is not permissible in law. A plaint duly instituted u/s 26 of the CPC has to be registered and in light of provisions contained in Section 27 of CPC, if the suit is duly instituted, summons have to be issued to the Defendants. It is noteworthy to mention here that the Civil Judge (S.D.), has not even exercised its powers under order 7 Rule 11 of the CPC and has rejected the plaint duly presented by treating it as a Miscellaneous Case. The Trial Court therefore clearly committed manifest error of law in registering the suit as a Miscellaneous case and hearing it on the question of maintainability.

18. The Plaintiffs had filed an Appeal against the order dated 30.09.2020 treating the order to be passed under Order 7 Rule 11 CPC. The District Judge held by order dated 18.01.2021 that the order dated 30.09.2020 could not be treated as an order under Order 7 Rule 11 CPC and therefore held that Appeal was not maintainable, Revision was maintainable and directed the Revision to be numbered accordingly. It is well settled that if an appeal has been filed against an order or decree against which no appeal is maintainable, the Court can treat the appeal as revision. I also find that this order dated 18.01.2021 has been challenged and instead the parties participated in revision proceedings before the District Judge over several hearings and raised all their contentions. No

objection was raised as to the lack of pecuniary jurisdiction before the District judge in revision proceedings and this issue cannot be permitted to be raised by the Petitioners for the first time before this Court in jurisdiction under Article 227. It is noteworthy to mention that at Para 83 of the plaint, the valuation of the suit is stated as Rs.20,00,000/- and as per the provisions of Section 115 of CPC r/w Chapter II of Civil Laws Uttar Pradesh (Amendment) Act 2019 the Revision u/s 115 of CPC upto Rs 25,00,000/- would lie before the District Judge.

19. The District Judge framed many points on the basis of the arguments raised on behalf of the Defendants, as recorded in the impugned judgment. These questions were not needed to be decided as the Defendant had right to file its Written Statement, deny the facts and law therein, and the Court under Order 14 Rule 1 CPC was then to frame issues and after issues were framed, parties are entitled to lead evidence. In absence of framing of issues and permitting parties to lead evidence, matter could not have been decided. It was however, open to decide the question of preliminary issues, but as to what will be the preliminary issues will also have to be decided under Order XIV Rule 2(ii) CPC being jurisdiction of the court and bar created by any law. Entire procedure laid down in law has been by-passed and findings on the merits of the case have been given which is not permissible in law.

20. At the time of dismissing the suit, the Civil Judge (Senior Division) had not issued summons to the Defendants (Petitioners herein) and therefore, the question of registration of the suit was between the court and the plaintiffs. The Defendant comes into picture the moment summons are issued to him.

21. This Court is conscious that the questions regarding the maintainability of a regular civil suit and its merits, which could not have been decided by the Trial Court without following the due procedure as per the Code, and further the contentious questions were not required to be decided by the District Judge in a Revision Petition. In any case, these

questions cannot be now decided by this Court in a petition under Article 227. Any observations by this Court will prejudice the rights and contentions of both the parties. The suit has now been registered as suit no. 353 of 2022. Summons have already been issued by the trial court on 26.05.2022 for filing the respective Written Statements and framing of issues.

22. In light of the above, both the petitions are disposed of by remanding the matter back to the Trial Court with directions to adjudicate the Civil Suit no. 353 of 2022 after following due procedure as per law without being influenced by any observation or findings of the District Judge vide impugned order dated 19.05.2022. All the parties are free to raise all their contentions before the trial Court.

Order Date :- 01.05.2023

Swati