

C.Ref. 1/2015
BEFORE
HON'BLE MR JUSTICE AJIT BORTHAKUR

This is a reference u/s 113 of C.P. Code, 1908 made by the learned Civil Judge, Senior Division, Capital Complex at Yupia, Arunachal Pradesh on the issue of territorial jurisdiction to try the Title Suit No. 46(YPA)/2013.

The brief fact of the present reference is that the cause of action for T.S No. 46 (YPA)/ 2013 arose within the district of West Siang, Arunachal Pradesh and the defendant is also not a resident within the jurisdiction of the said Court. Therefore, the learned trial Court held that the C.P. Code does not provide jurisdiction to the said Court at Yupia, Papum Pare District, Arunachal Pradesh. The learned Trial Court has observed that after the separation of judiciary, a Civil Court is established at Aalo in West Siang district, which has the jurisdiction to try the said suit. Hence, the learned trial Court by order, dated 29.11.2014, passed in T. S. No. 46 (YPA)/ 2013 has referred the suit to this Court for a decision on the issue, whether the said suit can be tried by the Civil Court at Yupia or the same be transfer to the Civil Court, Aalo, West Siang district for trial.

Heard Mr. S. Koyang, learned counsel appearing for the plaintiff/ respondent herein and Mr. R. Saikia, learned Amicus Curiae.

Perused the records of T.S. No. 46 (YPA)/ 2013.

It is pertinent to mention that the power to make a reference u/s 113 is subject to Or. 46 of C.P. Code. Therefore, Rule-1 of Or. 46 is to be read with Section 113, C.P. Code which prescribes the conditions and limitations, under which a reference can be made. Such conditions, which permit a reference are (1) a question of law arising in a suit, appeal or execution on which no appeal lies; (2) reasonable doubt on such question; (3) a statement of facts and the points, on which the doubt is entertained and (4) the expression of Court's own opinion on the point. Section 16 of C.P. Code, inter alia, provides for institution of suit in the Court within the jurisdiction of which, the property, movable or immovable in dispute wholly or in part, is situated. Section 17 of the C.P. Code gives the guidelines as regards the place of suing for suits contemplated in Section 16 of the C.P. Code, if the immovable properties, which are the subject-matter of the suit are situated within the pecuniary jurisdiction of more than one Court. In such a case, the suit can be filed in any one of those Courts, subject to this limitation that the Court in which such is filed has the pecuniary jurisdiction to try the suits. On the other hand, subject to the provisions of R-10A of Or.VII of C.P. Code, the plaint may be returned, at any stage of the suit, to be presented to the Court in which the suit should have been instituted.

In view of the above relevant provisions of the C.P. Code and in the backdrop of the unambiguous facts and opinion recorded by the learned Court below in the aforesaid reference order, dated 29.11.2014, passed in T.S. No. 46 (YPA)/ 2013, this Court finds the reference is incompetent and accordingly rejected, with a direction to the learned Court below to pass an appropriate order, afresh, on hearing the learned counsels of both the sides, in accordance with law.

Accordingly, the civil reference stands disposed of.

Let the LCRs be sent back along with a copy of this order.

A sum of Rs.5,000/- shall be paid by the Legal Services Authority, Govt. of Arunachal Pradesh, to Mr. R. Saikia, learned Amicus Curiae for assistance rendered in the instant reference, as per rule.