

GAHC010161012018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(I/O) 254/2018

1:RAMDIA GOSAI PARA NAMGHAR SAMITTEE
REP. BY ITS PRESIDENT SAMUDRA DEKA, AGED ABOUT 57 YEARS AND
ITS ERSTWHILE PRESIDENT WAS SRI ROBIN MEDHI, R/O. MAZARKURI,
RAMDIA, P.S. HAJO, DIST. KAMRUP(R), ASSAM, PIN 781102.

VERSUS

1:RAMDIA HITA SADHINI SABHA
REP. BY THE SECRETARY SRI BHABIN CHANDRA BHARALI, SON OF LATE
SUKRAM BHARALI, R/O. VILL- MAJARKURI, RAMDIA, P.S. HAJO, DIST.
KAMRUP(R), ASSAM, PIN 781102

Advocate for the Petitioner : MR. O P BHATI

Advocate for the Respondent : MR. SHEELADITYA

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

28.02.2019

Heard Mr. O. P. Bhati, learned counsel for the petitioner. Also heard Mr. Sheeladitya, learned counsel appearing for the respondent.

This Revision Petition has been filed invoking the jurisdiction of this Court under Article 227 of the Constitution of India being aggrieved by the order dated 23.04.2018 passed by the learned Munsiff, Kamrup at Amingaon, in Title

Suit No.62/2015 rejecting the prayer made by the petitioner/defendant under Order XIV Rule 2(2) CPC requesting for framing of a preliminary issue so as to decide the question of maintainability of the suit.

According to the petitioner, the plaintiff being an unregistered society, cannot maintain the title suit in the eye of law. The learned trial Court had rejected the prayer made by the petitioner by making the following observations :-

“Record reveals that the instant suit has been filed for declaration, recovery of possession and permanent injunction. The issue which the defendant/petitioner has prayed for being tried as a preliminary issue relates to maintainability of the suit in itself. The issue in question does not in any manner relates to jurisdiction of this Court or any legal bar created in respect of the instant suit. As such, I do not deem it proper to regard the issue in question in petition no.725/17 as a preliminary issue. Accordingly petition no.725/17 is rejected.”

Mr. Bhati submits that the issue here is not as to whether the Court has the jurisdiction to try the suit but whether the suit was maintainable. The learned counsel submits that a suit instituted by an unregistered society is not maintainable in view of the decision of this Court.

There is no dispute in this case that the plaintiff/defendant had questioned the maintainability of the suit and had prayed for framing a preliminary issue on the point of maintainability of the suit. There can hardly be any doubt about the fact that if a suit is found to be not maintainable in the eye of law, then in that event, the defendant can be relieved of contesting the same on merit by leading evidence.

Whether a suit is maintainable or not and if so, whether a preliminary issue is required to be framed for that purpose is a matter of discretion of the trial court. However, such a prayer has to be considered on the basis of cogent factors. Jurisdiction of the Court to try a suit is matter which comes under Section 9 of the CPC and is completely different from the question of maintainability of the suit due to want of competence of the plaintiff. As such, both the issues are distinct and different and have to be dealt with accordingly. While the want of jurisdiction of the court to try the suit may be a facet leading to the question of maintainability of a suit, the reverse is not always true.

In the present case, I am of the view that the learned trial court had failed to consider legal issue raised by the petitioner in the right perspective and therefore, has committed an error by confusing the issue of maintainability of the suit with the question of jurisdiction of the court.

In view of the above, the impugned order dated 23.04.2018 is held to be unsustainable in law. The same is accordingly set aside.

The learned trial court is directed to consider the application filed under Order XIV Rule 2(2) of the CPC by the defendant/ petitioner afresh in the light of the observation made herein above and pass a reasoned order disposing of the same.

With the above observation the revision petition stands disposed of.

JUDGE

Comparing Assistant