

Andrews Vs. Jos

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Court : Kerala

Decided On : Jul-03-2003

Reported in : AIR2003Ker348; 2003(2)KLT1074

Judge : K.S. Radhakrishnan and; Pius C. Kuriakose, JJ.

Acts : Civil Courts (Amendment) Act, 1996 - Sections 12 and 13

Appeal No. : C.M.A. No. 98 of 2003

Appellant : Andrews

Respondent : Jos

Advocate for Def. : S. Sreekumar, Adv.

Advocate for Pet/Ap. : V. Giri, Adv.

Judgement :

ORDER

K.S. Radhakrishnan, J.

1. This appeal has been preferred under Section 104 read with Order III, Rule 1(r) of the Code of Civil Procedure against the common order dated 19.12.2002 in I.As. 4679/02 and 3714/01 in O.S.333/01 on the files of the Additional Sub Judge, Ernakulam. Suit was instituted for cancellation of trust deed No. 1174/01 dated

20.4.01 of SRO Tripunithura executed by the first defendant. Plaintiff filed I.A.37144/01 for temporary injunction restraining the defendants from invoking or implementing or claiming any benefit on the strength of trust deed No.11744/01. Defendants 2 & 3 had also filed an application for injunction restraining the plaintiff from continuing as manager of H.S. Irimpanam and from taking any policy decision and implementing the same touching the administration and management of the school and from making any appointment in the school. Both the applications were heard by the Court below and were dismissed against which this appeal has been preferred by defendants 2 and 3, When the matter came up for hearing counsel appearing for the respondent raised a preliminary objection that the appeal is not maintainable before this Court since the valuation is below Rs. 2 lakhs. Reference was made to various provisions of the Civil Courts Act, 1957.

2. Counsel appearing for the appellant on the other hand submitted since this Court has already issued notice it is appropriate that this Court would dispose of the matter on merits. Counsel submitted in any view of the matter this Court has got concurrent jurisdiction being a superior Court. Since the question of jurisdiction has been raised we may decide that issue at the outset. Admittedly valuation of the suit is below Rs. 2 lakhs. The limit of jurisdiction of Court is dealt with in Part III of the Civil Court Act, 1957. Section 13 of the Act deals with appellate jurisdiction of District Court and Subordinate Judge's Court. Said provision as amended by Civil Courts (Amendment) Act, 1996 is extracted below.

13. Appellate Jurisdiction of District Court and Subordinate Judge's Court:-(1)

Appeals from the decrees and order of a Munsiff s Court and where the amount, or value of the subject matter of the suit does not exceed two lakhs rupees from the original decrees and orders of a Subordinate Judge's Court shall, when such appeals are allowed by law, lie to the District Court:

Provided that whenever a Subordinate Judge's Court is established in any District at a place other than the place where the District Court is stationed, appeals from the decrees or orders of the Munsiff s Courts within the local limits of the jurisdiction of such Subordinate Judge's Court may be preferred in such Subordinate Judge's Court:

Provided further that the District Court may remove to itself from time to time appeals so preferred and dispose of them itself or may, subject to the order of the High Court, refer any appeals from the decrees and orders of Munsiff s Courts preferred in the District Court to any Subordinate Judge's Court within the district.

(2) The provisions of Sub-section (1) shall apply to original decrees and orders of a Subordinate Judge's Court passed after the commencement of the Kerala Civil Courts (Amendment) Act, 1959, notwithstanding the fact that the suits in respect of which such decrees and orders have been passed were instituted before such commencement.

Above mentioned provision would show that appeals from the decrees and order of Munsiff's Court and where the amount or value of the subject matter of the suit does not exceed two lakhs rupees from the original decrees and orders of a Subordinate Judge's Court shall lie to the District Court. Expression 'shall' is to be treated as mandatory. Section 12 of the Act deals with appeal from decrees and orders of District Court or Subordinate Judge's Court which reads as follows: '12. Appeal from decrees and orders of District Court or Subordinate Judge's Court:- Save as provided in Section 13 regular and special appeals shall, when such appeals are allowed by law, lie from the decrees or orders of a District Court or a Subordinate Judge's Court to the High Court.'

3. Above mentioned provision would indicate that regular and special appeals shall lie from the decrees or orders of a District Court or a Subordinate Judge's Court to the High Court save as provided in Section 13 of the Act. Both the Sections 12 and 13 use the expression 'shall' which is mandatory in nature. Legislature has not contemplated concurrent jurisdiction of the District Court as well as High Court in the Civil Courts Act. In the absence of conferment of any concurrent jurisdiction by the Legislature on the High Court as well as District Court we have to hold that appellant has to approach District Court since valuation of the suit does not exceed Rs. 2 lakhs. We are therefore inclined to uphold the objection raised by the counsel for the respondent. Consequently this appeal is not entertained. Records be returned to the appellant. It is open to the appellant to move the District Court if so advised. Since we have examined only the question of jurisdiction we express

no opinion on the merits of the case.

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