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In the Andhra Pradesh High Court

Case No : C.R.P. No. 6532 of 2012

Bajrang Lal Agarwal — APPELLANT

Vs

Gayatri Gupta and Others — RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Citation : (2014) 1 ALD 352 : (2014) 1 ALT 735

Hon'ble Judges : M. Seetharama Murti, J

Bench : Single Bench

Advocate : Achuthanand, for the Appellant; Tulsi Raj Gokul, for the Respondent

Final Decision : Allowed

Judgement

M. Seetharama Murti, J.—This civil revision petition is directed against the orders dated 8.10.2012 of the learned XIV Additional Chief Judge, Fast Track Court, City Civil Court, Hyderabad allowing the application of the plaintiff in IA No. 357 of 2011 in OS No. 728 of 2007 filed under Order XV Rule (2)(1) read with Section 151 of the CPC (''the Code'', for short) requesting to pronounce the judgment in favour of the plaintiff/petitioner and against the respondents/defendants 1 and 2 and allow the suit to be proceeded against the rest of the respondents/ defendants who are nominal parties to the said suit. The facts leading to the present civil revision petition filed under Article 227 of the Constitution of India, in brief, are as follows: ''The 1st respondent/plaintiff (''the plaintiff, for short) filed a suit against the revision petitioner/3rd defendant (''the 3rd defendant'', for short) and other respondents/defendants 1, 2 and 4 to 7 for specific performance directing the defendants 1 to 7 to execute and register a sale deed in favour of the plaintiff or her nominees in respect of Flat bearing No. 202 situate in the 2nd floor of the building named and styled as A.K. Enclave Phase II ("B" Block) admeasuring 2350 square feet approximate plinth area together with proportionate undivided share of land equivalent to 90 square yards, in the land bearing Municipal Nos. 8-2-350 and 8-2-350/A, situated at Road No. 3, Banjara Hills, Hyderabad, more fully described in the schedule annexed to the plaint. The

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defendants 1 to 3, through a learned Advocate, had put in appearance having given vakalat to the said learned Advocate. A written statement was filed by the 3rd defendant (revision petitioner herein) resisting the suit. However, no written statement was filed at that stage on behalf of the defendants 1 and 2. The defendants 1 and 2 had engaged the services of another learned Advocate and had filed a common written statement. In the said written statement of the defendants 1 and 2, it is inter alia contended as follows:

At the outset, the defendants 1 and 2 hereinabove state that the averments made and the contentions raised in the above plaint are not wholly true and such of those averments and contentions that have not been specifically admitted are deemed to have been denied and the plaintiff is put to strict proof of the same.

The averments made in Paragraphs 1 and 2 are admitted except that the agreements were entered into at the request and insistence of defendants 1 to 3. The fact of the matter is that the defendant No. 3 has nothing to do with the agreements entered into by and between the plaintiff and these defendants. The contents of Paragraph 3 are admitted. Similarly the averments made in Paragraph 4 are admitted except that these defendants and the 3rd defendant had entered into a development agreement with the owners of the property. As a matter of fact the development agreement was entered into by these two defendants and the owners of the property who are defendants 4 to 7 in the above suit. The defendant No. 3 is only a piece rate contractor of these defendants, who undertook to execute the masonry works and other incidental works and has nothing to do with this defendant Firm. The averments made in Paragraph 5 are not wholly true. As stated above the 3rd defendant has nothing to do with the agreements between the parties except as a go between. Since the plaintiff did not pay the amount, these defendants did not register the flat. These defendants are ready and willing to register the flat immediately on payment of balance amount The issuance of notice as stated in Paragraph 6 is admitted These defendants did not give the reply since they have been in continuous touch with the plaintiffs husband and there was no acrimony between the parties. The averments of Paragraphs 7 to 10 are no more relevant since the plaintiff is prepared to pay the balance amount and these defendants are ready to execute the Registered Sale Deed in favour of the plaintiff. These defendants once again reiterate that the 3rd defendant is not a necessary party to these proceedings since he has no concern either with the agreement between these defendants and defendants 4 to 7 or the agreements between the plaintiff and these defendants.

In view of the above, these defendants are willing to proceed further with the consequential acts such as filing of compromise memo and thereafter executing the Registered Sale Deed in respect of Flat No. 202, AK Enclave, Phase II, B Block, 8-2-350/A, Road No. 3, Banjara Hills, Hyderabad in favour of plaintiff and hence the suit may be disposed of accordingly.

2. Having regard to the above contents of the written statement of the

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defendants 1 and 2; the plaintiff had filed the subject interlocutory application requesting the Court to pronounce judgment in favour of the plaintiff and against the defendants 1 and 2. The plaintiff, however, prayed that the suit be permitted to be continued to be proceeded against the rest of the defendants who are nominal parties to the suit. The defendants 1 and 2 did not resist the said application by filing a counter. The 3rd defendant having filed a counter resisted the said application of the plaintiff. In the said counter, the 3rd defendant had contended inter alia to the following effect:

(1) The content of Para 2 of the affidavit is not disputed to the extent that the plaintiff has entered into agreement of sale dated 18.2.2006 with the first defendant. It is not disputed to the extent that under the said agreement two car parking spaces were agreed to be provided by the first defendant It is submitted that as seen from the records filed by the plaintiff, two agreements of sale, 1st agreement of sale dated 18.2.2006 and another agreement of sale were executed on the same date.

(2) The contents of Paras 3 and 4 of the affidavit are not disputed to the extent that the first defendant is being represented by the 2nd defendant. The plaintiffs have filed a suit for specific performance against defendants 1 to 7 but not against the defendants 1 to 3. There is no admission as such to pronounce a judgment against defendants 1 and 2. When there are number of defendants, against whom the relief is sought, the suit cannot be decreed on the basis of any alleged admission of defendants 1 and 2. The plaintiff is not entitled to obtain a decree in the present case. The application filed by the plaintiff is misconceived. The defendant No. 3 had filed the written statement disputing the claim of the plaintiff by contending that the documents are inadmissible, and cannot be enforced by the Court. When such is the dispute between the parties a partial decree cannot be passed by the Court, more particularly when the relief is prayed for and is sought against all the defendants. As such the prayer is misconceived and the application is liable to be dismissed with costs.

However, the trial Court had allowed the petition of the plaintiff and pursuant to the said orders, a decree was also prepared.

3. Aggrieved of the said orders of the trial Court, the present civil revision petition has been preferred by the 3rd defendant.

4. In the grounds of revision and at the time of hearing, the following contentions are urged: ''The trial Court failed to consider that after the written statement is filed, the Court has to frame the issues, and had failed to frame issues. The defendants 1 and 2 had first engaged an Advocate. The said Advocate had filed vakalat for them and the third defendant. The defendants 1 and 2 had later, without the leave of the Court and without obtaining the ''no objection'' from the former Counsel, had engaged another Advocate and filed their written statement along with fresh vakalat on behalf of the defendants 1 and 2. The trial Court ought to have returned the vakalat and the written

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statement filed by defendants 1 and 2 in said circumstances. The provisions of law under Order XV Rules 1 and 2 are not applicable to the facts of the present case. The Court below failed to see that Order XII Rule 6 of the Code deals with judgment on admission made either in the pleadings or otherwise on record and based on the said provisions, the Court can pronounce such order or give such judgment as it may think fit, having regard to such admissions. However, the Court below failed to note that the application was filed by the plaintiff under Order XV Rules 1 and 2 of the Code, which empowers the Court to at once pronounce the judgment for or against the defendant who is one of the defendants not at issue with the plaintiff on any question of law or fact. In a suit for specific performance the Court cannot pass a partial decree against the defendants 1 and 2 when the relief is indivisible and affects the rights of the petitioner. There cannot be two decrees in a suit for specific performance, one at the interlocutory stage and the other at the final stage. Since a specific relief is prayed for against the defendants 1 to 7 and the decree to be granted is indivisible, a partial decree cannot be passed even without adjudicating the issue as to the legality of the two agreements of sale of even date being relied upon by the plaintiff. Even for passing an ex parte order, the Court has to adjudicate the legality of the claim and record a finding whether the suit claim, which is based on unregistered agreements of sale, can be granted or not. The Court below failed to see that even if a party admits the claim, the Court cannot grant a decree, without examining the merits of the matter and legality of the claim. The Court below failed to see that the agreements of sale of immovable property of value of Rs. 100/- and upwards have to be registered and that the suit agreements of sale are not admissible in evidence as the said documents are not sufficiently stamped as required under the Indian Stamp Act and are not registered. The two suit agreements are unenforceable under facts and law. The defendants 2 and 3 along with the petitioner have jointly addressed a letter dated 10.12.2007 to the Principal Secretary to the Government, Municipal Administration and Urban Development Department, Secretariat Buildings, Hyderabad, to release the sanctioned plan in respect of the 3rd floor. The defendants 1 to 3 are partners even according to the plaint allegations which fact the trial Court had failed to consider. The trial Court had not pronounced the judgment against the defendants 1 and 2. For all the contentions urged, the impugned order can be assailed in the present revision under Article 227 of the Constitution of India."

5. The learned Counsel for the plaintiff submitted that in view of the clear mandate under Order XV Rule 2 of the Code and in view of the categorical admissions made by the defendants 1 and 2 and as the third defendant is not a partner of the firm and as the third defendant is also not an executant of the suit agreements of sale, and as defendants 3 to 7 are nominal parties, the trial Court rightly passed a decree against the defendants 1 and 2, who are not at issue with the plaintiff on any question of law or fact and that there are no infirmities in the impugned order calling for interference. The plaintiff would further contend

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that the present revision petition is not maintainable under facts and law.

6. I have given a detailed and thoughtful consideration to the facts and submissions and I have carefully gone through the impugned order and the decree granted by the trial Court.

7. At the outset, it is necessary to refer the following provisions of law.

Order 12 Rule 6

6. judgment on admissions.--(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any parry or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

Order 15 Rules 1 and 2:

1. Parties not at issue.--Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

2. One of several defendants not at issue.--(1) Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the Court may at once pronounce the judgment for or against such defendant and the suit shall proceed only against the other defendants.

(2) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and the decree shall bear the date on which the judgment was pronounced.

8. (a) Admittedly and as per the averments in the plaint, the suit is filed for specific performance in respect of the plaint schedule flat based on two agreements of sale of even date in respect of the same flat executed by the defendants 1 and 2 in favour of the plaintiff. The other defendants did not join in the execution of the suit agreements of sale. Both the documents are stated to be not registered and are engrossed on the non-judicial stamps worth less than Rs. 100/- each. The said agreements of sale are not exhibited by either the plaintiff or the defendants 1 and 2 in the instant proceeding when the matter was before the trial Court. In fact, at the time of enquiry before the trial Court, no oral and documentary evidence was adduced. In the plaint, it is stated that the 3rd defendant is a partner of the first defendant firm though, it was sought to be contended on behalf of the plaintiff before this Court that defendant No. 3 is not a partner of the 1st defendant firm.

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8. (b) Be that as it may, the suit agreements of sale were executed by the defendants 1 and 2 only and defendant No. 3 did not join them in executing the said agreements. However, in the plaint, the relief of specific performance was sought against all the defendants and it is nowhere stated in the plaint that the defendants 3 to 7 are nominal parties though in the present enquiry before the trial Court and this Court, the plaintiff for the first time stated that the other defendants 3 to 7 are nominal parties. It is categorically stated in the plaint that the defendants 1 to 7 are liable to perform their obligation of transferring the suit schedule flat in favour of the plaintiff by receiving balance of sale consideration which the plaintiff has been ready and willing to pay and get the suit schedule flat transferred to her name. While seeking the decree against the defendants 1 and 2 under Order XV of the Code, the plaintiff did not opt for not pressing the suit against the other defendants. Basing on the admissions of the defendants 1 and 2, the plaintiff requested the Court below to pronounce the judgment as defendants 1 and 2 are not at issue with the plaintiff. Notably, contrary to the plaint averments, it is stated in the written statement of defendants 1 and 2, who are executants of agreements of sale, that the 3rd defendant has nothing to do with the agreements entered into by and between the plaintiff and the defendants 1 and 2. The defendants 1 and 2 have denied in their written statement certain allegations in the plaint to the effect that the 3rd defendant had not entered into a development agreement and that the 3rd defendant is only piece rate contractor of the defendants 1 and 2 and that the 3rd defendant undertook to execute masonry works and other ancillary works and has nothing to do with the defendants 1 and 2. On the other hand the plaintiff had specifically requested in the application, to pronounce the judgment in favour of the plaintiff/ petitioner and against the respondents/defendants 1 and 2 and to allow the suit to be proceeded against the rest of the respondents/defendants who are nominal parties to the said suit. In the plaint, it is also stated that the defendants 1 to 3 are the developers and that they had entered into a Development Agreement with defendants 4 to 7 who are the owners of 1800 square yards of land with structures thereon forming part of Premises No. 8-2-350 and 8-2-350/1/A, Road No. 3, Banjara Hills, Hyderabad, followed by execution of supplemental Development Agreements. Thus, according to the plaint averments, the ownership of the land originally was with the defendants 4 to 7. In the plaint, the relief is sought not only in regard to the Flat bearing No. 202 but also in regard to the proportionate undivided share of land equivalent to 90 square yards. Therefore, obviously for the above and other reason, the plaintiff sought the relief of specific performance against all the defendants; and the defendants 3 to 7, particularly the 3rd defendant is resisting the suit. Thus, according to the plaint averments and the relief claimed in the plaint, without the defendants 4 to 7 joining the defendants 1 and 2 in executing regular registered sale deed in favour of the plaintiff, no valid and marketable title would pass to the plaintiff in respect of the plaint schedule property is the contention of the learned Counsel for the 3rd defendant/revision petitioner herein. This contention, in view of the facts narrated above has some legal force and acceptable merit at this stage,

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where this Court has to consider a prima facie case of the 3rd defendant.

8. (c) On the above and other aspects the contentions of the learned Counsel for the 3rd defendant are as under: "Though the sale agreements are not exhibited, the trial Court, in its orders, had referred to them and stated that the 3rd defendant is not a party to the said agreements of sale. But the trial Court had not considered a vitally important aspect that the said agreements of sale are not properly/sufficiently stamped and are not registered and therefore, did not consider the question as to whether the relief of specific performance can be granted pursuant to such agreements of sale in respect of the plaint schedule property. Though the defendants 1 and 2 are not at issue, when the defendant No. 3 is at issue, any registered document like sale deed executed by the defendants 1 and 2 alone without the defendants 3 to 7 joining them would be of no avail. Since the defendants 4 to 7 are the original owners of the property and unless they join in the execution of the registered sale deed, no title particularly in respect of undivided share of land in an extent of 90 square yards in the schedule land would pass to the plaintiff. If during the pendency of the suit against the other defendants, the plaintiff obtains a sale deed from the defendants 1 and 2 and deals with the property and transfers it or encumbers it, then complex situations would arise; and in case of ultimate success of the 3rd defendant, he would be helpless and the decree that may ultimately be passed would remain a paper decree. The trial Court without considering all these factual and legal aspects had ordered the petition as prayed for and had committed grave error causing grave injustice to the 3rd defendant."

8. (d) It is necessary to examine the operative portion of the order impugned in the revision. It reads as hereunder:

In the result, the petition is allowed. No costs.

The decree granted reads as under:

(1) That the petition is allowed.

(2) That there is no order as to costs.

A plain perusal of the contents of the above decree and the order [either the operative portion or the entire order] would show that the relief prayed for and granted on the face of it is unworkable. The trial Court did not state either in its order or in the operative portion of the order as to what is the balance of sale consideration that is payable by the plaintiff and also did not fix any time for payment of the same and did not specifically direct the defendants 1 and 2 to execute a regular registered sale deed in favour of the plaintiff. A plain perusal of the order passed by the trial Court particularly, the operative portion of the order and the decree would show that such an order and decree lacking in material details cannot ex facie be sustained under facts and law in the complex fact situation as is evident from the pleadings and the facts of the case and contentions narrated above. In view of the complex issues that may arise for

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consideration and in view of the defence of the other contesting defendant No. 3, the trial Court ought not to have passed such a cryptic order without specifying what is the relief sought for and what is the relief granted. For all these reasons, this Court is of the well-considered view that the order of the trial Court is unsustainable and is liable to be set aside.

9. The learned Counsel for the respondent relied upon a decision in Smt. Kamlesh Kohli and Another Vs. Escotrac Finance and Investment Ltd. and Others, , wherein the Hon''ble Supreme Court laid down the following propositions: That the CPC nowhere prescribes that decree against some of the defendants to a suit cannot be passed or that if the suit is dismissed qua one defendant, it is required to be dismissed against the other defendants too. Order 1 Rule 6 makes the position clear.... Further, Order VIII Rules 5 and 10, Order IX Rule 11 and Order XV Rule 2 make the position clear by providing that a decree can be passed against the defendant who has not filed the written statement or who remains absent or who is not at issue with the plaintiff on any question of law or fact'' The propositions of law are not disputed before this Court. But it is contended that the suit before the trial Court is a suit for specific performance and the plaintiff sought the decree against all the defendants and that a partial decree on admission of defendants 1 and 2 cannot be granted as the relief of specific performance claimed is indivisible. It is also urged that going by the plaint averments no valid title would pass to the plaintiff if only the defendants 1 and 2 execute a registered sale deed pursuant to the decree passed against them based on their admissions, which are qualified; Further, the averments in the written statement of the defendants 1 and 2 are contrary to the averments in the plaint. Hence, in view of the facts peculiar to this case and as the defendants 1 and 2 who made admissions had also denied some of the important plaint averments, it cannot be said that their admissions are unqualified and that they had admitted the whole of the plaintiffs claim and that they are not at issue on any questions of fact. In the case on hand the plaintiff and the defendants 1 and 2 are at issue on the following aspects:

The defendants 1 and 2 had denied the plaint averment that the defendants 1 and 2 and the 3rd defendant had entered into a development agreement with owners of the property i.e., the defendants 4 to 7. According to the plaint averments, the defendants 1 to 3 are developers whereas according to the defence of the defendants 1 and 2, the defendants 1 and 2 are developers and the 3rd defendant is a piece rate contractor of the defendants 1 and 2, and that the 3rd defendant undertook to execute the masonry works and other incidental works and has nothing to do with the 1st defendant Firm. According to the plaint averments the defendants 1 to 7 are liable to perform their obligation of transferring the plaint schedule flat in favour of the plaintiff. But the 3rd defendant in his written statement had denied the plaintiffs entitlement to the relief of specific performance claimed in the suit." Thus on the above and other factual aspects, the defendants 1 and 2 are at issue with the plaintiff. And, the 3rd defendant is at issue with the plaintiff and the defendants 1 and 2 as well.

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Therefore, it is not a case attracting the provisions of Order XV of the Code as it cannot be said that the defendants 1 and 2 are not at issue with the plaintiff on any question of law or of fact. Hence, it is evident that without examining the facts and law, and in ignorance of and disregard of the provisions of law the trial Court had passed the impugned orders. Therefore, the impugned orders call for interference both under facts and in law.

10. Before drawing curtains on the controversy, it is necessary to consider one more contention as regards the maintainability of the revision in view of the contention of the plaintiff/1st respondent herein that against the impugned order, an appeal would lie but not a revision. At the out set, what is to be noted is that, in the case on hand, only the impugned order had been passed in the interlocutory application filed by the plaintiff, but no judgment on admission was pronounced against the defendants 1 and 2 in the suit. Even as a sequel to the impugned orders, no judgment was pronounced by the trial Court. Order XII Rule 6 empowers a Court to ''make such order or give such judgment as it may think fit, having regard to such admissions''; but, the application now under consideration was not filed under Order XII, but was filed under Order XV of the Code. In fact, Rule 2 under Order XV of the Code ordains that the Court may pronounce a judgment and that a decree shall be drawn up in accordance with such judgment. But in the case on hand, no judgment as contemplated under the said rule was pronounced by the Court below. Hence, there is no judgment to be appealed against. Therefore, in the well considered view of this Court, the present civil revision petition is maintainable. Auxiliary to what has been observed above, it is pertinent to note that the trial Court having not pronounced a judgment as required under Order XV of the Code had passed a decree with cryptic statement and therefore, exercised the jurisdiction in a manner not permitted by law and thereby, failure of justice had occasioned. Further, after the amendment to the Section 115 of the Code by Act 46 of 1999, which came into force with effect from 1.7.2002, a question whether such an amendment effected in any manner the jurisdiction of the High Court under Article 226 or 227 of the Constitution of India and whether the interlocutory orders passed by the Courts subordinate to the High Court against which remedy of revision has been excluded by the said Amendment Act are open to challenge or not and continue to be subject to, certiorari and supervisory jurisdictions of the High Court has been considered in the decision in Surya Dev Rai Vs. Ram Chander Rai and Others, . Having considered the provisions of law and the well-established principles relating to constitutional jurisdiction conferred on the High Court under Articles 226 and 227 of the Constitution of India, the Hon''ble Supreme Court in the cited decision had summed up the conclusions in a nutshell. The conclusions that may be relevant are as under:

(1) xxxx

(2) xxxx

(3) xxxx

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(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate Courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step into exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law; and (iii) a grave injustice or gross failure of justice has occasioned thereby.

As noted, the instant revision is filed under Article 227 of the Constitution of India. It is well settled that the parameters for exercise of jurisdiction under Article 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules, vide decision in Surya Dev Rai''s case (supra). In the case on hand, the passing of the impugned order insofar as the defendants 1 and 2 is a decision made and it attains finality if this Court at this stage does not intervene. If the impugned order is allowed to stand, the error of the moment may earn immunity from correction. Therefore, the facts and circumstances of this case would make it appropriate for this Court to exercise the jurisdiction and to intervene because the error committed by the trial Court is yet capable of being corrected at this stage but not at a later stage according to the submissions of the learned Counsel for the 3rd defendant/revision petitioner, which merit acceptance. It is also settled law that a writ of certiorari is generally directed against an act or order of proceeding of the subordinate Court and such a writ of certiorari can issue even if the lis is between the two private parties, as per the ratio laid down in Surya Dev Rai v. Ram Chander Rai (supra). Notably, the trial Court referred to the two suit agreements of sale though they are not exhibited and had failed to take note of the fact in regard to the inadmissibility of the said agreements of sale for want of proper stamp duty and registration and thus acted on inadmissible pieces of evidence in arriving at its conclusions that the plaintiff is entitled to a partial decree for specific performance against the defendants 1 and 2. In view of the fact that the trial Court without considering all the factual and legal aspects had ordered the petition as prayed for and as the trial Court had committed a grave and manifest error causing grave injustice to the 3rd defendant, this Court is of the well considered view, that this is a fit case to exercise the jurisdiction to do equity and to set at naught the grave injustice and to prevent the gross failure of justice that is likely to occasion in case the impugned order attains immunity from correction at a later stage. Viewed thus, this Court finds that the order impugned cannot be sustained under facts and law.

In the result, the civil revision petition is allowed without costs and the impugned

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order is set aside. Miscellaneous petitions, if any, pending in this revision shall stand dismissed.

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