

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION No.3187 of 2015

ORDER:

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This Civil Revision Petition is filed challenging the order dt.10-06-2015 in I.A.No.1195 of 2014 in O.S.No.1610 of 2006 of the V Additional Junior Civil Judge, Warangal.

2. The petitioner herein is defendant in the said suit, which had been filed by respondent for a perpetual injunction restraining the petitioner from interfering with his alleged possession and enjoyment of the plaint schedule property, which is an extent of Ac.1.00 in Sy.No.166/A and Ac.2.35 gts in Sy.No.167/B of Illandu village, Wardhannapet Mandal, Warangal District.

3. The petitioner herein along with 2 others had instituted a suit for specific performance in respect of the very same property against the respondent, her children and mother-in-law stating that the husband of respondent was the owner of this property and he had executed an agreement of sale dt.07-06-1997 in favour of plaintiff Nos.1 and 2 in O.S.No.1155 of 2007, who in turn entered

into an agreement of sale with the petitioner herein, who was plaintiff in O.S.No.1155 of 2007. It was further contended that the husband of respondent died on 27-07-2004 leaving the respondent, her two daughters and mother-in-law as his legal heirs.

4. In O.S.No.1610 of 2006 P.W.1 had filed her affidavit in lieu of chief-examination and the case was posted for marking of documents on her behalf.

5. At that stage, I.A.No.1195 of 2014 was filed by petitioner under Section 151 C.P.C. to club both the suits which are pending before the same Court i.e. V Additional Junior Civil Judge, Warangal contending that it would be convenient to both parties if the documents are allowed to be marked in one suit and both suits are tried together and it would also avoid conflicting judgments therein.

6. Counter affidavit was filed by respondent thereto opposing the said application stating that the vendors of the petitioner, who are plaintiff Nos.1 and 2 in O.S.No.1155 of 2007, were not parties in O.S.No.1610 of 2006; the reliefs in the suits were different; the evidence, documents and parties are also different; and therefore they cannot be clubbed. She further contended that clubbing of the suits would cause great prejudice to her.

7. By order dt.10-06-2015, the Court below dismissed the said application. It noted that the reliefs claimed in the suits are different and some parties in O.S.No.1155 of 2007 are not parties in O.S.No.1610 of 2006; and proof in a suit for perpetual injunction and in a suit for specific performance would be different. It also held that cause of action in both the suits are different and O.S.No.1610 of 2006 is at the stage of marking of documents of plaintiff and O.S.No.1155 of 2007 is at the stage of cross-examination of P.W.1 and there is no need to club both the suits.

8. Challenging the same, this Revision is filed.

9. Learned counsel for petitioner contended that the parties to this Revision are the parties in both the suits; while the petitioner is claiming the property through the husband of respondent through plaintiff Nos.1 and 2 in O.S.No.1155 of 2007, the respondent is claiming the property through her husband. Therefore, there is strong connection between both the suits and if the suit O.S.No.1155 of 2007 for specific performance is decreed, O.S.No.1610 of 2006 cannot be decreed since that would result in conflicting decrees, and in the interest of justice, both the suits ought to be tried together to avoid this.

10. The learned counsel for respondent, on the other hand, refuted the above contentions and supported the order passed by the Court below.

11. I have noted the submissions of both sides.

12. From the facts narrated above, it is clear that originally the husband of respondent is admitted to be the owner of the subject land, which is the subject matter in both the suits. While the petitioner claims the property through plaintiff Nos.1 and 2 in O.S.No.1155 of 2007, who obtained an agreement of sale allegedly from the husband of respondent, the respondent claims that she inherited the property from her husband. The suit O.S.No.1610 of 2006 is at the stage of marking of documents by P.W.1 and the suit O.S.No.1155 of 2007 is at the stage of cross-examination of P.W.1. Therefore, it is not a situation where one of the suits is at an advanced stage of trial and the clock cannot be set back at the point of time when I.A.No.1195 of 2014 was filed. It may be that all the parties in O.S.No.1155 of 2007 are not the parties in O.S.No.1610 of 2006, but the fact remains all those parties have claimed a connection with the same property which is subject matter both the suits. In my considered opinion the Court below has taken a hyper technical approach without considering the real connection

between both these suits and without noticing that the same property is the subject matter of both the suits and that there is a possibility of conflicting judgments, if both suits are decreed.

13. In this view of the matter, the Civil Revision Petition is allowed and the order dt.10-06-2015 in I.A.No.1195 of 2014 in O.S.No.1610 of 2006 of the V Additional Junior Civil Judge, Warangal is set aside and the said I.A. is allowed. No costs.

14. As a sequel, miscellaneous petitions pending if any, in these Revisions shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 19-08-2015

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