

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Civil Revision Petitions No.2368 and 2450 of 2015

COMMON ORDER:-

These two revisions arise out of the orders of the learned Senior Civil Judge, Vizianagaram, made in I.A.Nos.1773 of 2014 and 1774 of 2014 in O.S.No.48 of 2005. Both the orders came to be passed on 02-06-2015. While I.A.No.1773 of 2014 was filed under Order 1 Rule 10 and Order VI Rule 17 C.P.C., read with Section 151 C.P.C., to implead the proposed party by name Ghan Shyam Sarma as a party defendant in the suit whereas I.A.No.1774 of 2014 was filed in the same suit to reopen the matter for deciding the application filed under Order I Rule 10 C.P.C.

2. The petitioners herein as well as in Interlocutory Applications is the plaintiff whereas the respondent is the defendant. The petitioner filed the suit O.S.No.48 of 2005 for declaration of title and ejectment of the defendant from the suit schedule properties. The defendant in the suit has taken a specific stand that the suit is bad for non-joinder of necessary party namely the proposed defendant who is his paternal uncle and who has also got equal rights over the suit schedule property. A specific issue on that aspect is said to have been framed. The parties went to trial and no steps were taken by the plaintiff to implead Ghan Shyam Sarma. However, it is stated that after evidence was concluded, the plaintiff filed I.A.No.128 of 2012 under Order I Rule 10 C.P.C., to implead the said Ghan Shyam Sarma. By order, dated 03-09-2014 the learned Senior Civil Judge, Vizianagaram, dismissed the application on the grounds that no consequential relief is sought for and that the application to implead is hopelessly bilated.

3. Aggrieved by the said orders, the plaintiff filed C.R.P.No.3492 of 2012 on the file of the High Court. Admittedly, the said C.R.P. was dismissed having been withdrawn and no liberty was given to the petitioner/plaintiff to file any fresh application for impleading the said

Ghan Shyam Sarma. Thereafter, the plaintiff filed these two applications for the relief stated supra.

4. By the impugned orders, the learned Senior Civil Judge has dismissed both the applications on the ground that the relief that is now sought for was specifically rejected by the said Court, aggrieved by which, a revision was filed and that also having been dismissed as withdrawn, no application for the self-same relief can be filed. While dismissing the said applications, the learned Senior Civil Judge has directed that the petitioner/plaintiff should pay costs of Rs.5,000/- in each of the applications towards cost to the District Legal Services Authority, Vizianagaram, on or before 10-06-2015, failing which, the principal suit shall stand dismissed for default. Aggrieved by the said orders, the present revisions are filed.

5. It is the contention of the petitioner/plaintiff that the learned Senior Civil Judge erred in dismissing the application on the ground that the previous application for the self-same relief was dismissed and the C.R.P. filed there against was also withdrawn, consequently that order became final and hence, fresh application for the self-same relief is not maintainable. It is further submitted that the learned Judge also erred in directing the plaintiff to pay costs of Rs.5,000/- in each of the applications to DLSA and in default thereof, directing that the suit itself be dismissed for default is an erroneous order.

6. On the other hand, the respondent/defendant who filed his appearance contended that there are absolutely no merits in the revisions, that the Court below was right in dismissing the applications taking into consideration the abnormal delay in taking the steps inspite of there being a specific plea by the defendant about the suit being bad for non-joinder of necessary parties. With regard to the direction to pay costs, it is submitted that the learned Judge taking into consideration that the suit is very old, imposed such a direction which cannot be found fault.

7. The point for consideration is as to whether the impugned orders

suffer from any irregularity or illegality warranting any interference by the revisional Court?

8. **Point:-** As already noticed above, the factual matrix is not in controversy. The petitioner/plaintiff having unsuccessful in impleading the proposed defendant in I.A.No.1281 of 2012 and when the said order was challenged before the High Court and the C.R.P. was dismissed without reserving any right to the petitioner/plaintiff to file the application afresh, the present application seeking the self-same relief cannot be sustained. The learned Senior Civil Judge is therefore right in holding that the said order became final and when the Court has once rejected the request of the petitioner/plaintiff to implead the proposed party, once again the same relief cannot be sought for.

9. However, the second limb of the impugned order do not seem to be proper. It is no doubt true that the Court has got the discretion of imposing costs against a party who has been indulging in delaying tactics in disposing of the suit. However, the order in default is irregular and illegal. As already stated, the order of the Court below is that if the costs of Rs.10,000/- that is imposed against the petitioner/plaintiff is not deposited by 10-06-2005, the principal suit viz., O.S.No.48 of 2005 itself shall stand dismissed for default. It is an admitted fact that the main suit is at the stage of arguments. If the condition imposed by the Court below in the matter of payment of costs is not complied with, the Court cannot direct that the main suit which is being keenly contested and which is at the stage of arguments itself shall stand dismissed for default. This part of the order suffers from material irregularity and illegality warranting interference. The point is accordingly answered.

10. Both the Civil Revision Petitions are disposed of with a direction to the learned trial Judge to proceed to dispose of O.S.No.48 of 2005 on merits after hearing both sides without insisting for payment of costs of Rs.5,000/- as has been ordered in the impugned orders, dated 02-06-2015 in I.A.Nos.1773 and 1774 of 2015. The learned trial Judge is

further directed to dispose of the suit uninfluenced by any of the observations made either by himself in the impugned order or by any other Court.

Miscellaneous petitions, if any, pending in these revision petitions shall stand closed.

M.K.S.Jaiswal, J

03rd July, 2015

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