

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.4242 of 2014

ORDER:

This Revision Petition is filed challenging the Order dt.02-07-2014 in Tr.O.P.No.242 of 2014 of the Principal District Judge, Kadapa.

2. The said Transfer O.P. was filed under Section 24 CPC seeking withdrawal of O.S.No.35 of 2013 on the file of the Principal Junior Civil Judge, Proddatur and to transfer the same to the Court of the II Additional District Judge, Proddatur for disposal along with O.S.No.63 of 2011 pending on the file of the latter Court.

3. The Court below has rejected the said application on the ground that the reliefs sought for in both the suits are different and merely because item-3 in O.S.No.63 of 2011 is one of the properties which is subject matter of O.S.No.35 of 2013, the said suits cannot be clubbed together. It also observed that the petitioner, who is 1st defendant in O.S.No.63 of 2011, was set *ex parte* in that suit and he had no locus standi to seek transfer of O.S.No.35 of 2013 to be tried along with O.S.No.63 of 2011.

4. Assailing the same, this Revision Petition is filed.

5. The undisputed facts are that O.S.No.63 of

2011 was filed by respondent Nos.2 and 3 in this Revision against the petitioner and other respondents for partition of four items of property and allotment of 10/18th share to the plaintiffs therein. The petitioner herein who is 1st defendant in that suit has been set *ex parte*.

6. It is the contention of the plaintiffs in O.S.No.63 of 2011/respondent Nos.2 and 3 herein, who are sons of the petitioner that the properties which are subject matter of O.S.No.63 of 2011 are joint family properties and they are entitled to a share therein. The suit is being contested by respondent Nos.1, 4 and 6 on the ground that the properties are not joint family properties; that they were already partitioned; that a common judgment was passed in O.S.No.34 of 1999 and O.S.No.4 of 2001 by the I Additional District Judge, Kadapa directing partition of the properties; and that the judgment in O.S.No.34 of 1999 was modified by this Court in its judgment dt.22-11-2011 in A.S.No.2252 of 2003 under a settlement between the parties.

7. O.S.No.35 of 2013 is filed by 1st respondent herein against the petitioner for recovery of possession of a house property which is also part of the schedule to O.S.No.63 of 2011 (as item-3). While 1st respondent herein/plaintiff in O.S.No.35 of 2013 contended that this item is his exclusive property having been obtained in the above partition, the petitioner herein is contesting the

same stating that that this property is joint family property and 1st respondent herein is not entitled to any relief.

8. Thus, the question whether the property which is subject matter of O.S.No.35 of 2013, and which is also part of the plaint schedule in O.S.No.63 of 2011, is joint family property entitled to be divided among the parties, is an issue common to both suits. Therefore, the judgment in one case would have an impact on the other case and there is a possibility of passing of conflicting judgments in these suits if they are allowed to be tried in two different courts.

9. Merely because the relief sought in both the suits are different, ignoring the above fact, the Court below could not have rejected the application filed by the petitioner under Section 24 for transfer of O.S.No.35 of 2013 to the Court of the II Additional District Judge, Kadapa at Proddatur where O.S.No.63 of 2011 is pending. In my opinion, the Court below has not correctly exercised its discretion under Section 24 of the Act.

10. The learned counsel for 1st respondent Sri Mahadeva Kanthrigala, contended that the petitioner, being 1st defendant in O.S.No.63 of 2011, has been set *ex parte* and he had no locus to seek clubbing of both these suits.

11. I am unable to agree with this submission.

Whether the petitioner is *ex parte* or not in O.S.No.63 of 2011 is not relevant. The II Additional District Judge, Kadapa at Proddatur, who is dealing O.S.No.63 of 2011, has to answer the issue whether the properties which are subject matter of that suit (including the property which is the subject matter of O.S.No.35 of 2013) are joint family property or not.

12. The learned counsel for 1st respondent then relied on decisions in **Surapuneni Rani and others Vs. Surapuneni Latha and others**^[1] and **Dr.Reddy's Laboratories Ltd., Hyderabad Vs. Pulletikurthi Varaha Chandra Bose and others**^[2].

13. In **Surapuneni Rani** (1 supra), this Court had taken a view that clubbing of four suits pending in four different courts by a single Court cannot be done since the relief claimed in the four suits was distinct and independent of each other and there is no possibility of conflicting decisions there. Such is not the situation here since the issue as to whether the property which is subject of O.S.No.35 of 2013, and also subject matter of O.S.No.63 of 2011, is joint family property, is an issue common to both suits and the result in one suit would materially affect the other. Therefore, this decision is not applicable.

14. As regards **Dr.Reddy's Laboratories'**

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(2 supra), in that case, this Court had held that relief claimed in the suits is different and so it is not permissible to club the suits pending in two different courts. I am unable to agree with the principle laid down in the said case and I am of the opinion that the principle has been stated too broadly therein.

15. Where an issue arising in one suit is also arising in another suit pending before different Court and parties are common to both suits, then the decision in one suit will have a bearing on the decision of the other suit, it is desirable to club both suits to avoid conflicting decisions. Therefore, I am of the opinion that the said decision also cannot be applied.

16. Having regard to the above reasoning, the Revision Petition is allowed. The order dt.02-07-2014 in T.O.P.No.242 of 2014 of the Principal District Judge, Kadapa is set aside; T.O.P.No.242 of 2014 is set aside; and O.S.No.35 of 2013 is withdrawn from the file of the Principal Junior Civil Judge, Proddatur and transferred to the Court of II Additional District Judge, Kadapa at Proddatur for common trial along with O.S.No.63 of 2011. Since the suit O.S.No.63 of 2011 is an old suit, the Court of II Additional District Judge, Kadapa at Proddatur shall endeavour to dispose of both the suits as expeditiously as possible preferably within six months from the date of

receipt of a copy of this order. No costs.

17. As a sequel, miscellaneous petitions pending, if any, shall stand disposed of.

JUSTICE M.S.RAMACHANDRA RAO

Date: 04.02.2015

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[\[1\]](#) 2004 (4) ALT 764

[\[2\]](#) 2004 (5) ALT 209