

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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CIVIL REVISION PETITION No.2095 of 2015

ORDER:

This civil revision petition arises under Article 227 of the Constitution. The petitioner is the 1st defendant in O.S.No.116 of 2007 on the file of the learned Senior Civil Judge, Bhimavaram. He, along with others, filed O.S.No.124 of 2007 on the file of the same Court for partition of the suit properties therein. He therefore filed I.A.No.1112 of 2014 in O.S.No.116 of 2007 seeking clubbing of both the suits. By order dated 22.04.2015, the trial Court dismissed the I.A. Aggrieved thereby, he filed the present civil revision petition.

Perusal of the order under revision reflects that the trial Court refused to club both the suits on the ground that the parties to the proceedings were not one and the same, the relief claimed was not one and the same and the suit properties were not identical, except for two items.

O.S.No.116 of 2007 was filed by the 1st respondent herein for a permanent injunction in relation to seven items of property. Item Nos.1, 2(a), 2(b), 3(a) and 3(b) related to different extents of land in R.S.No.665/1 of Gunupudi Village, Bhimavaram Municipality and Mandal, West Godavari District, while item No.3(c) related to an extent of land in R.S.No.664 of the same village.

O.S.No.124 of 2007 was filed by the petitioner herein, along with others, seeking partition of the suit schedule properties therein. The suit schedule comprised five items of property. Item No.1 related to an extent of land in Survey No.665/1 of Gunupudi Village, Bhimavaram Municipality and Mandal, West Godavari District, while item No.3 related to an extent of land in R.S.No.664 of Gunupudi Village, Bhimavaram Municipality and Mandal, West Godavari District.

The 5th defendant in O.S.No.124 of 2007 is none other than the husband of the 1st respondent herein, the plaintiff in O.S.No.116 of

2007. It is stated that I.A.No.1051 of 2011 was filed in O.S.No.124 of 2007 by the plaintiffs therein seeking to implead the 1st respondent herein as a party-defendant to the suit along with her husband and that orders were reserved on the said I.A. eight months ago but have not been pronounced till date.

On a conspectus of the above facts, it is clear that though the relief claimed in the two suits is different, one being a partition suit while the other is an injunction suit, it is a settled position of law that the Court would be entitled to go into the issue of title incidentally while deciding an injunction suit. In the partition suit, the Court is bound to go into the question of title before granting relief. Therefore, once it is established that both the suits relate to lands in R.S.Nos.664 and 665 in Gunupudi Village, Bhimavaram Municipality and Mandal, West Godavari District, there is a parity in the subject-matter of the two suits and in the event they are not clubbed together, there would be a risk of contradictory findings as to title being rendered by the Court while dealing with the two suits separately.

It is also relevant to note that both the suits are pending on the file of the same Court, before the learned Senior Civil Judge, Bhimavaram. In that view of the matter, this Court is of the opinion that it would be in the interests not only of the parties but also to save the valuable time of the Court to club both the suits. All the more so, as there is a possibility of the parties in both the suits being the same to a great extent once the trial Court passes orders on I.A.No.1051 of 2011 in O.S.No.124 of 2007.

Sri Yallabandi Ramatirtha, learned counsel, would however state that the 1st defendant in O.S.No.124 of 2007 expired and no consequent steps have been taken by the plaintiffs in the said suit. Learned counsel would contend that in the event his client's suit in O.S.No.116 of 2007 is clubbed with O.S.No.124 of 2007, his client would be prejudiced as the trial would not go on in the light of the death of the 1st defendant in O.S.No.124 of 2007. Learned counsel

informed this Court that the trial in his client's suit, O.S.No.116 of 2007, has already commenced and is at the stage of cross-examination of PW.1. This Court finds substance in this submission.

Sri P.Durga Prasad, learned counsel for the petitioner herein, the 1st plaintiff in O.S.No.124 of 2007, would state that a memo has already been filed before the trial Court for taking suitable measures in the light of the death of the 1st defendant in the said suit. In any event, the plaintiffs in O.S.No.124 of 2007 would necessarily have to complete the process required to be taken in the light of the death of the 1st defendant within a time frame failing which their suit proceedings cannot go on.

The order under revision is accordingly set aside and the learned Senior Civil Judge, Bhimavaram, is directed to club both the suits, O.S.Nos.116 of 2007 and 124 of 2007, pending on his file. However, in the event the plaintiffs in O.S.No.124 of 2007 fail to take steps in relation to the death of the 1st defendant in the said suit within two weeks from the date of receipt of a copy of this order, this order shall stand recalled and the trial Court would be at liberty to proceed with the two suits independently.

The civil revision petition is accordingly allowed to the extent indicated above.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

Date:02.09.2015

GJ