

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.4459 of 2010

ORDER:

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This Revision has been filed challenging the order dt.17-08-2010 in I.A.No.825 of 2010 in O.S.No.19 of 2004 on the file of the Senior Civil Judge, Madanapalle.

2. The petitioner herein is the plaintiff in the said suit. She is the daughter of one R.Sowbhagyamma and R.T.Reddepaa Reddy. A vacant site stands in the name of the petitioner herein which was allegedly purchased under a registered sale deed and a premises bearing No.III-161-A-1 was constructed thereon. This premises appears to have been mortgaged by the petitioner to the 1st respondent herein for securing a loan. On non-payment of the loan, steps were initiated by the 1st respondent Corporation for recovery of the said amount against the petitioner.

3. Thereupon, the petitioner filed O.S.No.19 of 2004 against respondents 1 to 3 for a direction to them to pay certain amounts to the petitioner and also for perpetual injunction restraining respondents 1 to 3 from interfering in any manner with the peaceful possession and enjoyment of the plaint schedule property by the petitioner.

4. Three years thereafter, the mother of the petitioner/4th respondent filed O.S.No.333 of 2007 contending that the site, on which the property referred to above exists, was purchased by her and her husband in 1984 in the name of the petitioner, that she is its absolute owner and petitioner could not have mortgaged the said property to the 1st respondent. She, therefore, sought relief of declaration of right, title and interest in the said property and also for perpetual injunction against the petitioner and the 1st respondent herein.

5. Having regard to the above pleadings, the counsel for the 1st respondent filed I.A.No.825 of 2010 to conduct joint trial in both the suits specifically pointing out that the subject matter of both the suits is one and the same; that the petitioner herein, who is the plaintiff in O.S.No.19 of 2004 is the daughter of the 4th respondent, who is the plaintiff in O.S.No.333 of 2007; and that the 1st respondent is a party in both the suits. He contended that for an effective and comprehensive adjudication of both suits, they should be tried jointly and that if they are tried independently, there is a possibility of inconsistent judgments being passed therein. He also alleged that the petitioner herein, who filed O.S.No.19 of 2004 is hand-in-glove with her mother/4th respondent, who filed O.S.No.333 of 2007, and both of them are colluding to jeopardise the valuable rights of the 1st

respondent.

6. Counter was filed by the petitioner herein contending that the application itself is vexatious and unnecessary. It is further contended that the cause of action in both the suits is independent, distinct and separate and, therefore, the application be dismissed.

7. By order dt.17-08-2010 the court below allowed the said application observing that no prejudice would be caused to the petitioner and to respondents 2 to 4 if the suits are clubbed. No other reasons are assigned in the order.

8. Learned counsel for the petitioner would submit that the court below has not properly considered the question as to whether both the suits are liable to be clubbed and the reasons assigned by the court below for clubbing both the suits are not correct. He also contended that the I.A.No.825 of 2010 is filed by counsel for 1st respondent and not by an officer of 1st respondent and the court below ought not to have entertained it.

9. Counsel for the 1st respondent, on the other hand, contended that although the order passed by the court below appears to be cryptic, there is justification for clubbing both the suits having regard to the pleadings of the parties.

10. It is not disputed by the petitioner that the 4th respondent is her own mother. It is also not disputed that the property in respect of which the petitioner has filed O.S.No.19 of 2004 is also the subject matter of O.S.No.333 of 2007 filed by the 4th respondent against the petitioner and the 1st respondent. While the petitioner contends that she is the owner of the said property, the 4th respondent contends that the property in fact belongs to her and her husband and it was purchased in the name of the petitioner. Therefore, the title to the property in question is in issue in both the suits. It is, therefore, just and necessary that both the suits are heard together so that there are no inconsistent judgments with regard to the above issue. Therefore, even though the order passed by the court below appears to be cryptic, I am of the opinion that its conclusion is correct for the aforesaid reasons. Merely because the affidavit in support of I.A.No.825 of 2010 was filed by counsel for 1st respondent, the court below cannot reject it. Counsel is presumed to have filed it on instructions of officials of 1st respondent. Therefore, I do not find any merit in the Revision and it is accordingly dismissed. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.S.RAMACHANDRA RAO, J

Date:11-06-2015

Prv