

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

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CIVIL REVISION PETITION No.1905 of 2013

ORDER:

This revision is filed challenging the order dated 08.03.2013 in I.A.N.274 of 2011 in O.S.No.4 of 2010 on the file of II Additional District Judge, West Godavari District, Eluru.

2. The petitioner herein is the defendant in the above suit. The above suit was filed by the respondent herein against the petitioner seeking damages of Rs.10,10,000/- for defaming him with interest thereon at 12% per annum from the date of suit and thereafter till realisation.

3. In the said suit, the petitioner filed I.A.No.274 of 2011 under Section 10 CPC. He contended that the respondent's status as the son of Md.Idrees is in issue not only in it but also in a suit O.S.No.14 of 2006 filed by the petitioner before the Principal District Judge, West Godavari, Eluru for partition of the plaint schedule properties therein; that it was decreed and A.S.No.280 of 2009 was filed in this Court against it; that the respondent had filed O.S.No.25 of 2007 for perpetual injunction restraining the petitioner from addressing him as Md.Suleman, S/o Kumar Sultana; the said suit was

decreed; that an appeal was filed against the said judgment with a delay condonation petition; that the said petition was also dismissed; that he filed a petition to review the said order which was dismissed; therefore, he questioned the same in the Supreme Court of India; the issue of legitimacy of the respondent is directly and substantially in the partition suit in O.S.No.14 of 2006 and also in O.S.No.4 of 2010; and therefore, since the appeal A.S.No.280 of 2009 against the judgment in O.S.No.14 of 2006 is pending in this Court now, the proceedings in O.S.No.14 of 2006 be stayed.

4. This application was opposed by the respondent contending that, in spite of the petitioner suffering an order of injunction in O.S.No.25 of 2007 restraining him from calling the respondent as Md.Suleman, S/o Kumar Sultana (which order was confirmed in an appeal and also by the Supreme Court of India by dismissing the SLP), the petitioner continued to call the respondent as son of Kumar Sultana; and therefore, the respondent was constrained to file O.S.No.4 of 2010 seeking damages for defamation; and only with a view to drag on the proceedings in O.S.No.4 of 2010, this application has been filed. It is also contended that O.S.No.14 of 2006 filed for partition of the plaint schedule property by the petitioner was dismissed on merits and dismissal of the said case has no relevance and connection to O.S.No.4

of 2010. He, therefore, prayed that I.A.No.274 of 2011 be dismissed.

5. *Vide* Order dated 08.03.2013, the Court below dismissed I.A.No.274 of 2011. It held that the decree in O.S.No.25 of 2007 in favour of the respondent restraining the petitioner from calling him as son of Qumar Sultana had become final by virtue of the dismissal of Special Leave Petition filed by the petitioner in the Supreme Court of India; the question whether the respondent is the son of Qumar Sultana or not has thus been decided conclusively in O.S.No.25 of 2007; the issue in the partition suit is different; and therefore, there is no necessity to stay the suit O.S.No.4 of 2010 pending disposal of A.S.No.280 of 2009 in the High Court against the judgment in O.S.No.14 of 2006.

6. Questioning the same, this revision is filed.

7. Heard Sri D.V.N.Acharya, learned counsel for the petitioner and Sri P.Kesava Rao, learned counsel for the respondent.

8. Learned counsel for the petitioner contended that in O.S.No.25 of 2007 the legitimacy of the respondent is not directly and substantially in issue because it is a suit for permanent injunction; any finding given in that suit regarding the legal status of the respondent is not

conclusive; the said matter is also in issue in O.S.No.14 of 2006; although the said suit was dismissed, an appeal in A.S.No.280 of 2009 is pending in the High Court against it; the main issue in O.S.No.4 of 2010 is also about the legitimacy of the respondent; and therefore, the Court below ought to have granted stay of proceedings in O.S.No.4 of 2010.

9. Learned counsel for the respondent however contended that the legitimacy of the respondent was directly and substantially in issue in O.S.No.25 of 2007 to which the petitioner was a party; the judgment therein has been confirmed up to the Supreme Court; the basis for grant of injunction in the said suit was the finding in that suit after contest that the respondent is the legitimate son of Md.Idrees born through Annemma and that the petitioner miserably failed to prove that the respondent is the son of Qumar Sultana; therefore, there is no necessity to stay the proceedings in O.S.No.4 of 2010 on the ground that A.S.No.280 of 2009 is pending.

10. I have noted the submissions of counsel on both sides.

11. In O.S.No.25 of 2007 filed by the respondent against the petitioner, it is not disputed that a perpetual injunction was granted on 02.07.2007 restraining the petitioner from calling the respondent as son of Qumar

Sultana. It was held therein that the respondent is the legitimate son of Md.Idrees born through Annemma, which finding is given after contest. It is not disputed that an appeal was filed with a delay condonation petition against the said judgment, that the said application was dismissed and consequently, the appeal was also dismissed and the said judgment was also confirmed by the Supreme Court of India in SLP.

12. In O.S.No.14 of 2006, no doubt an issue is framed whether the respondent is not the legitimate son of late Md.Idrees and son of Qumar Sultana. In this suit also there is a finding that the respondent is the only son of Md.Idrees. It may be that an appeal A.S.No.280 of 2009 is pending against the said judgment and the legitimacy of the respondent would also be an issue in the appeal.

13. But having regard to the fact that the decision on the issue of legitimacy of the respondent has been upheld up to Supreme Court in O.S.No.25 of 2007, I am of the opinion that there is no necessity to stay O.S.No.4 of 2010 where the said issue is again sought to be decided.

14. In A.S.No.280 of 2009 arising out of O.S.NO.14 of 2006, there is a larger issue as to whether the properties in respect of which partition is sought, can be partitioned or not.

15. In this view of the matter, I am of the opinion that there is no necessity to stay the proceedings in O.S.No.4 of 2010 in view of the pendency of A.S.No.280 of 2009.

16. Therefore, the Civil Revision Petition is dismissed.
No costs.

The Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

M.S.RAMACHANDRA RAO,
J

June 12th, 2015.
ssp