

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

CIVIL REVISION PETITION No. 2293 of 2015

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, aggrieved by the order dated 16.10.2014 passed by the learned II Additional District Judge, Kurnool at Adoni, in I.A.No.218 of 2014 in O.S.No.35 of 2011.

The brief facts, which are necessary for disposal of the present civil revision petition, are that the respondents 1 and 2 herein filed O.S.No.35 of 2011 on the file of the II Additional District Judge, Kurnool at Adoni, against the petitioners and the 3rd respondent herein for partition and separate possession of the suit schedule property. During pendency of the suit, the petitioners filed I.A.No.218 of 2014 under Section 10 and Section 151 CPC seeking stay of all further proceedings in the said suit till disposal of the appeals pending before this Court against the common judgment passed by the learned II Additional District Judge, Kurnool at Adoni, in O.S.Nos.11 and 13 of 2005. It is stated that earlier the respondents 1 and 2 filed O.S.Nos.11 and 13 of 2005 for cancellation of the gift deeds executed by their father in favour of the petitioners and for permanent injunction restraining the petitioners from interfering with the peaceful possession and enjoyment of the schedule property. The Court below after considering the oral and documentary evidence dismissed both the suits by a common judgment dated 08.08.2011. Aggrieved thereby, the respondents 1 and 2 filed appeals before this Court. It is also stated that the issue involved, the parties and also the properties in all these three suits are one and same. Therefore, sought for stay of all proceedings in O.S.No.35 of 2011. The 3rd respondent filed a counter contending that the petition is bad in law and the facts are misconceived, that the suit is not barred under Order 2 Rule 2 CPC and that the Court has observed that the gift deeds are void and as such the title is not conveyed to the petitioners. Therefore, sought to dismiss the petition. After hearing both parties, the Court below dismissed the petition by an order dated 15.10.2014. Questioning the same, the petitioners preferred the present revision.

Sri S. Laxminarayana Reddy, learned counsel for the petitioners, submits that since the parties and subject matter in O.S.Nos.11 and 13 of 2005 and the connected appeals pending before this Court and also the present suit i.e., O.S.No.35 of 2011 are one and same, the proceedings in the subsequent suit should be stayed, by

applying the parameters as laid down in Section 10 of CPC, till disposal of the appeals, but without considering the principles laid down by this Court in ***Koya Venkata Krishna Rao and another Vs. Patchava Anasuya and another*** and also the judgments in ***Sagar Shamsher Jung Bahadur Rana and another Vs. The Union of India and others, National Institute of Mental Health & Neuro Sciences Vs. C. Parameshwara, Gupte Cardiac Care Centre and Hospital Vs. Olympic Pharma Care (P) Ltd.*** and ***V.P. Vrinda Vs. K. Indira Devi and others***, the Court below has erroneously dismissed the petition filed by the petitioners.

On the other hand, Sri P. Vishnuvardan Reddy, learned counsel for the respondents, submits that by an order dated 10.11.2011 in A.S.M.P.No.2425 of 2011 in A.S.No.753 of 2011, Division Bench of this Court already declined to grant stay of all further proceedings in O.S.No.35 of 2011 pending the appeal and in view of the same, the petitioners are estopped from filing such an application in O.S.No.35 of 2011 before the Court below on the self same ground and that the Court below has rightly considered the effect of the order passed by a Division Bench of this Court in A.S.M.P.No.2425 of 2011 in A.S.No.753 of 2011 and dismissed the petition. He further submits that the appeals filed by the respondents 1 and 2 are only to the limited extent and filing of the appeals does not make any difference.

In this case, no doubt, the issue in A.S.No.753 of 2011 and O.S.No.35 of 2011 filed by the respondents 1 and 2 is whether the suit schedule property in both the cases is the joint family property or the self acquired property. But when the petitioners filed a petition vide A.S.M.P.No.2425 of 2011 in A.S.No.753 of 2011 under Section 10 of CPC seeking stay of all further proceedings in O.S.No.35 of 2011, by an order dated 10.11.2011 Division Bench of this Court declined to grant stay and made it clear that the said suit should be considered and disposed of in accordance with law uninfluenced by any of the finding and observations made in O.S.No.11 of 2015. The Court below is bound by the said orders. In view of the same, it cannot be said that the Court below erroneously dismissed the petition filed by the petitioners under Section 10 of CPC. No doubt, the petitioners have relied on several judgments, but in view of the orders passed by a Division Bench of this Court which has become final and are subsisting, this Court cannot also go into that aspect. Further, filing of the appeals by the respondents 1 and 2 does not make any difference as contended by the learned counsel for the respondents. In the facts and circumstances of the case, it is not necessary to go into the judgments relied on by the learned counsel for the petitioners. In view of the above, I see no grounds in the

revision to interfere with the order under challenge.

Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Consequently, miscellaneous petitions if any pending in the revision shall stand dismissed.

A. RAJASHEKER REDDY, J.

28th August, 2015

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THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

C.R.P.No.2293 of 2015

28th August, 2015

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