

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
CIVIL REVISION PETITION No.151 of 2015

% 13.02.2015

Between:

N.Jayamma,

..... **Petitioner**

And:

\$ N.Santosh Kumar,

.....**Respondents**

< Gist:

> Head Note:

! Counsel for the Petitioner: Sri A.H.Chakravarthy

^ Counsel for the Respondents: Sri P.Chandra Sekhar
Reddy

? Cases Referred:

NIL

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
CIVIL REVISION PETITION No.151 of 2015

Date:13.02.2015

Between:

N.Jayamma,

W/o Chandrappa and four others.

..... Petitioners

And:

N.Santosh Kumar,
S/o Bikshapathi and two others.

...Respondents

Counsel for the Petitioners: Sri A.H.Chakravarthy

Counsel for the Respondents: Sri P.Chandra Sekhar Reddy

The Court made the following:

ORDER:

This Civil Revision Petition arises out of order, dated 18.11.2014 in I.A.No.802 of 2014 in O.S.No.196 of 2006 on the file of learned XI Additional District Judge (Fast Track Court), Ranga Reddy District at L.B.Nagar.

Respondent No.1 filed the above-mentioned suit for specific performance of agreement of sale against the petitioners and respondent Nos.2 and 3. The petitioners filed the above-mentioned I.A. under Section-10 read with Section-151 of the Code of Civil Procedure for staying of the said suit on the plea that respondent No.3 filed O.S.No.1071 of 2003 on the file of learned IV Additional Senior Civil Judge (Fast Track Court), Ranga Reddy District at L.B.Nagar for partition of a part of the suit schedule property; that the said suit was dismissed on 29.09.2009, against which, respondent No.2 has filed A.S.No.670 of 2009 in this Court and secured an order of interim injunction restraining petitioner Nos.1 and 2 and others from alienating the suit schedule property; and that as the subject matter of the present suit is part of the suit schedule property in the said suit, the present suit needs to be stayed. The lower Court has, however, dismissed the said application. Feeling aggrieved by the said order,

defendant Nos.1 to 5 have filed this Civil Revision Petition.

I have heard Sri A.H.Chakravarthy, learned counsel for the petitioners and Sri P.Chandra Sekhar Reddy, learned counsel for respondent No.1 and perused the record.

Section 10 of the Code of Civil Procedure reads as under:

“Stay of suit: No court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.”

In order that the suit is stayed on account of pendency of previously instituted suit, the parties have to satisfy the following ingredients:

- (a) the matter in issue in the present suit is directly and substantially in issue in the previously instituted suit; and
- (b) both the suits must be between the same parties or between the parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed or in any Court beyond the limits of India established or continued by the Supreme Court.

The matter in issue in the previously instituted suit, viz., O.S.No.1071 of 2003 is whether the plaintiff therein was entitled to partition and separate share as claimed by her, while in the later suit, the matter in issue is whether

respondent No.1-plaintiff is entitled to a decree for specific performance of agreement of sale.

Learned counsel for the petitioners submitted that as the subject matter of the suit is common in both the cases, the above-mentioned first ingredient of Section 10 C.P.C. is satisfied.

“Subject matter of a suit” is the property with respect to which the parties litigate, while “the matter in issue” relates to issue of facts or law or both arising in the suit. In order to satisfy ingredient (a) supra, it is not enough if it is shown that the subject matter in both the suits is common. The party has to further show that the matter in issue arising in the present suit is directly and substantially in issue in the previous suit also.

As pointed out hereinbefore, the issues arising in both the above-mentioned suits are different and distinct from each other.

On the facts of this case, even ingredient-(b) supra is also not satisfied because the plaintiffs in both the suits are different. It is no one’s case that the plaintiff in the present suit is litigating under the same title on which the plaintiff in the previous suit is litigating. On the contrary, they are wholly unconnected with each other. Therefore, as rightly pointed out by the lower Court the petitioners have failed to satisfy the ingredients of Section 10 of the Code of Civil Procedure for staying O.S.No.196 of 2006.

For the above-mentioned reasons, I find no merit in this Civil Revision Petition and the same is, accordingly, dismissed.

As a sequel to dismissal of the Civil Revision Petition, CRPMP.No.180 of 2015 filed by the petitioners for interim relief is dismissed as infructuous.

*JUSTICE C.V.NAGARJUNA
REDDY*

13th February, 2015

Note:

LR copies to be marked.

B/o

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