

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

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CIVIL REVISION PETITION No. 3117 of 2015

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ORDER:

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Assailing the docket order dated 01.07.2015 in I.A.No.597 of 2015 in O.S.No.202 of 2012 on the file of the Principal Junior Civil Judge at Jagtial, wherein a petition filed under Order XIV Rule 5 and Section 151 Code of Civil Procedure seeking framing of additional issues was rejected, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

The respondent-plaintiff filed O.S.No.202 of 2012 seeking perpetual injunction restraining the petitioner-defendant herein from causing illegal interference with the peaceful enjoyment of plaintiff over the suit road. During the pendency of the suit, the defendant filed an I.A. under Order XIV Rule 5 and Section 151 C.P.C., for framing of two additional issues i.e., 1) Whether the suit in O.S.No.76 of 2005 on the file of the Principal Junior Civil Judge Court will operate as Resjudicata and this suit is not maintainable? And 2) Whether the suit is hit by Section 11 of C.P.C. as Resjudicata? After considering the rival submissions, the trial Court rejected the said application. Challenging the same, the present Civil Revision Petition is filed.

The learned counsel for the petitioner mainly submits that earlier the plaintiff filed O.S.No.76 of 2005 on the file of the Principal Junior Civil Judge at Jagtial in respect of the very same property seeking permanent injunction against one Khaja Waheeduddin Subhani and Alladdin Obaid. The said suit was dismissed on 13.03.2012. In view of the orders passed in the suit and as the property involved in O.S. No. 76 of 2005 and also in O.S.No.202 of 2012 filed by the plaintiff herein are one and the same, he submits that framing of additional issues are just and necessary.

On the other hand, the learned counsel for the respondent opposed the application stating that Section 11 of C.P.C., will not apply to the case on hand as the parties to the suit and cause of action are different. He also submits that the injunction is in respect of a raastha between two plots and as such the issue of Res-judicata would not arise.

Section 11 of C.P.C., reads as under :

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

The Res-judicata is a doctrine apply to give finality to lis in original or appellate proceedings. The doctrine in substance means that an issue or a point which has been decided and attaining finality should not be allowed to be reopened and re-agitated twice over. Section 11 engrafts this doctrine with a purpose that a final judgment rendered by the Court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privys, and that constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

In Syed Mohd. Salie Labbai (dead) by L.Rs. and others v. Mohd. Hanifa (dead) by L.Rs., and others, the Apex Court held as under :

“Before a plea of res judicata can be given effect, the following conditions must be proved:

- i) that the litigating parties must be the same;
- ii) that the subject matter of the suit also must be identical;
- iii) that the matter must be finally decided between the parties; and
- iv) that the suit must be decided by a court of competent jurisdiction.

“The best method to decide the question of res judicata is first to determine the case

of the parties as put forward in their respective pleadings of their previous suits, and then to find out as to what had been decided by the judgments which operate as res judicata. But pleadings cannot be proved merely by recitals of the allegations mentioned in the judgment.”

As seen from the record, though the plaintiff in both the suits is one and the same but the respondents in both the suits are different. It is true that both the suits are filed for perpetual injunction but the subject matter is different. The incident in O.S.No.202 of 2012 took place on 30.09.2012, when the respondents tried to interfere with the peaceful possession and enjoyment of the plaintiff over the suit road, whereas in O.S. No.76 of 2005 the respondents/defendants therein tried to alienate the said property belonging to Ameena Begum by wrongfully encroaching on to the said road on 20.03.2005, which was prevented by the plaintiff from doing so. Since the dispute in both the suits are not between the same parties and as the events which lead to filing of the suits are also different, this Court sees no reason to interfere with the order under challenge.

Accordingly, the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous Petitions pending if any in this C.R.P. shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Date: 06.10.2015

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