

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

C.R.P.No.4732 of 2013

ORDER:

This Revision Petition is filed challenging the order dt.11-10-2013 in I.A.No.164 of 2012 in A.S.No.92 of 2008 of the VI Additional Senior Civil Judge (FTC), Medchal, Ranga Reddy District.

2. Petitioner herein is defendant in O.S.No.172 of 2002 filed by the respondent against him for perpetual injunction. The suit was dismissed in 2008 and challenging the same, the respondent filed A.S.No.92 of 2008 before the VI Additional Senior Civil Judge (FTC), Medchal, Ranga Reddy District. Pending the appeal, the respondent filed I.A.No.164 of 2012 under Order 23 Rule 1 CPC seeking to withdraw the appeal with leave to file a fresh suit for declaration of title contending that the petitioner is also claiming the same property as was claimed by the respondent and that the said dispute can be resolved only through a comprehensive suit for declaration of title.
3. Counter affidavit was filed to the said application opposing this prayer and contending that the respondent cannot be allowed to withdraw appeal and allowed to file fresh comprehensive suit for declaration of title.
4. By order dt.11-10-2013, the Court below allowed I.A.No.164 of 2012 observing that the suit, out of which the appeal arose was only one for bare injunction and in such a situation, the petitioner did not acquire any vested right even if it is dismissed.
5. Challenging the same, this Revision Petition is filed.
6. Learned counsel for the petitioner contended that the

observation of the Court below that the petitioner did not acquire vested right by virtue of dismissal of the suit is against the interest of the petitioner and that the said observation be deleted since it would come in the way of the petitioner to defend any subsequent suit filed by the respondent seeking relief of declaration of title. He also placed reliance on the judgment in **Gopireddy Prabhakar Reddy Vs. Gopireddy Suryanarayana Reddy**, where, in similar circumstances, a suit for injunction was sought to be withdrawn by the plaintiff with liberty to file a fresh suit for declaration of title. The trial Court had dismissed the said application and the same was confirmed in the Revision Petition. This Court observed that the reason given by the petitioner therein that with a view to file a comprehensive suit for inclusion of the prayer of declaration of title, though appears to be appealing, if such pleas are accepted during the midst of the trial, more often the plaintiffs would try to find an easy way out to wriggle out of the tight situations wherever they find the going tough during the trial, by coming out with such applications. It observed that if a liberal approach in giving such permissions is displayed by the Courts, there is a likelihood of the defendant suffering the litigation endlessly. It observed that whenever request for withdrawal of the suits after commencement of the trial is made, the Courts need to examine such request with due care and caution and unless the Court is fully satisfied that sufficient reasons exist for granting such permission, such applications shall not be allowed. It observed that it is open to the petitioner therein to seek relief of declaration of title by way of amendment of the plaint.

7. From the facts narrated above, it is clear that in the suit for

injunction filed by the respondent against the petitioner, the respondent had disputed the title of the petitioner and claimed some property which the petitioner was seeking to protect by way of an injunction.

8. In **Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs. and Others**, the Supreme Court held that where plaintiff's title is under a cloud, and he does not have possession, he must seek both declaration and injunction. It held that such a cloud is said to arise over a person's title, when some apparent defect in his title to the property, or when some prima facie right of a third party over it, is made out or shown. It held that an action for declaration, is the remedy to remove the cloud on the title to the property.
9. In the present case, it is clear that there is a clear cloud cast on the title of the respondent in view of the pleading of the petitioner in the suit. Therefore the respondent is within his rights to seek to withdraw the appeal with liberty to file a fresh suit for declaration.
10. Order 23 Rule 1 CPC permits withdrawal of a suit at any time after its institution and sub Rule (3) thereof permits such withdrawal with liberty to institute a fresh suit, if the suit must fail by reason of some formal defect or if there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter or a suit or part of a claim.
11. The question therefore to be considered is whether sufficient grounds, in the view of the Court, exist for allowing the application to withdraw the existing suit and to institute fresh suit or not.

12. The proposition of law enunciated in **Gopireddy Prabhakar Reddy** (1 supra) appears to be too broad and the view expressed therein, particularly, in respect of suits for injunction which are sought to be withdrawn for filing a suit for declaration when there is a clear cloud cast on the title of the plaintiff, does not appear to be proper in view of the observations of the Supreme Court in **Anathula Sudhakar** (2 supra).
13. Also in the present case, probably the respondent was advised that the suit having been disposed of, the question of amendment of relief seeking relief of declaration of title at this point of time, is not advisable since the evidence on record might not be sufficient to sustain his claim to title.
14. Therefore, I do not find any error in the order passed by the Court below in permitting the respondent to withdraw the suit and granting him leave to file a suit for declaration of title.
15. Coming to the plea of the petitioner to delete the observation in the order passed by the Court below that he did not acquire any vested right by virtue of dismissal of the suit is concerned, the said words do not mean that the Court expressed any view that petitioner has no right in the property. They only mean that no vested right is acquired by him by virtue of dismissal of the suit. If the right of the petitioner is found to be superior to that of the respondent, even if the respondent files a suit for declaration of title, he would succeed but not otherwise.
16. Therefore, I do not find any merit in the Civil Revision Petition and the same is accordingly dismissed. No costs.

17. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 16-09-2015

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