

THE HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.1358 of 2014

ORDER:

Defendant in O.S.No.8 of 2013 on the file of the Senior Civil Judge, Manthani is the petitioner in the present revision filed under Article 227 of Constitution of India.

In the present revision challenge is to the order, dated 26-03-2014 passed by the said Court, dismissing the I.A.No.103 of 2014 filed by the petitioner herein under the provisions of Section 10 of the Code of Civil Procedure.

Heard Sri T. Rama Chandra Rao, learned counsel for the petitioner and Sri K. Narsimha Chary, learned counsel for the respondents apart from perusing the material available before the Court.

The respondents herein instituted the present suit in O.S.No.8 of 2013 against the petitioners herein for perpetual injunction in respect of the suit schedule land, admeasuring Ac.0-18 gts., in Sy.No.264/B situated at Kamanpur village and mandal of Karimnagar District. In the said suit the petitioner herein filed present I.A.No.103 of 2014 under Section 10 of the C.P.C., seeking stay of the suit proceedings till the disposal of O.S.No.108 of 2008 on the file of the Junior Civil Judge, Manthani, Karimnagar District.

The respondents herein filed counter affidavit, resisting the said application. The learned Senior Civil Judge, Manthani, by way of an order, dated 26-03-2014 dismissed the said application filed by the petitioner herein.

Aggrieved by the said order passed by the learned Senior Civil Judge, dismissing I.A.No.103 of 2014, the present revision has been filed under Article 227 of the Constitution of India.

It is contended by the learned counsel for the defendant/petitioner herein that the order passed by the Court below is erroneous, contrary to law and is opposed to the very spirit and object of provisions of Section 10 of the C.P.C. It is further contended by the learned counsel that had the contents of the affidavit filed in support of the present application been considered by the learned Senior Civil Judge from proper perspective, order impugned in the present revision would not have emanated. It is nextly contended by the learned counsel that since the petitioner herein fulfilled the ingredients of Section 10 of the C.P.C., the learned Senior Civil Judge is not justified in dismissing the application. It is also contended by the learned counsel that if the two suits are allowed to be proceeded it would lead to conflicting judgments.

In support of his submissions and contentions learned counsel for the petitioner placed reliance on the decision in case of ***GUPTE CARDIAC CARE CENTER AND HOSPITAL V. OLYMPIC PHARMA CARE (P) LTD***^[1].

On the contrary, it is vehemently contended by the learned counsel for the plaintiffs/respondents herein that the Court below is perfectly justified in passing the impugned order and there is no illegality nor any material infirmity in the order passed by the learned Senior Civil Judge and in absence of the same, the present revision is not maintainable. It is also submitted by the learned counsel that as there are no ingredients of Section 10 of the C.P.C., the Court below is perfectly justified in dismissing the application. It is also submitted by the learned counsel that the causes of action for two suits are different and the parties are different and the properties are also different, as such the order impugned in the revision does not warrant any interference by this Court under Article 227 of the Constitution of India.

In the above background now the question that emerges for consideration of this Court in the present revision is:

Whether the order under revision is in accordance with the provisions of Section 10 of the C.P.C., or whether it requires any correction by this Court under Article 227 of the Constitution of India?

The information available before this Court manifestly discloses that in the suit instituted by the respondents herein the defendant/petitioner herein filed the present application under Section 10 of the C.P.C., on the grounds that the parties to the litigation are same and the properties are also same.

As per the provisions of Section 10 of the C.P.C., 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.

It is the case of the petitioner herein that the suit in O.S.No.108 of 2008 filed by the petitioner herein along with others against the second plaintiff in the present suit and certain others in respect of the land admeasuring Ac.0-18 gts., in Sy.No.264/B situated at Kamanpur village and mandal of Karimnagar District is pending consideration before the learned Junior Civil Judge, Manthani. Admittedly, in the present suit i.e., O.S.No.8 of 2013 there are as many as 5 plaintiffs and the suit schedule property in O.S.No.8 of 2013 is the land admeasuring Ac.0-18 gts., in Sy.No.264/A situated at Kamanpur village and mandal of Karimnagar District. Therefore, by any stretch of imagination it cannot be said that the matter in issue in O.S.No.108 of 2008 is directly and substantially in issue in O.S.No.8 of 2013.

In fact, the learned Senior Civil Judge, considered all these aspects and after thoroughly considering the provisions of Section 10 of the C.P.C. dismissed the application filed by the petitioner

herein. The learned Senior Civil Judge also observed at paragraph No.8 of the impugned order that when two matters are pending before different Courts it is open for the parties to file a petition before the learned District Judge, seeking relief to stay the matters along with further reliefs.

The judgment in ***GUPTE CARDIAC CARE CENTER AND HOSPITAL V. OLYMPIC PHARMA CARE (P) LTD (1 supra)***, in the considered opinion of this Court would not render any assistance to the case of the petitioner herein as the contingencies mentioned therein are conspicuously absent in the present case.

In these circumstances, this Court is of the considered opinion that the order passed by the Court below does not suffer from any illegality or any jurisdictional error. At this juncture, it may be appropriate to observe that it is settled and well established proposition of law that unless the order impugned suffers from perversity and jurisdictional error, the jurisdiction of this Court is not available under Article 227 of the Constitution of India.

For the aforesaid reasons, the Civil Revision Petition is dismissed. There shall be no order as to costs. The Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.V. SESA SAI, J

March 10, 2015

*Note: Furnish C.C. in
three days. B/o.PN*

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THE HON'BLE SRI JUSTICE A.V. SESA SAI

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[\[1\]](#) (2004) 6 SCC 756