

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5603 OF 2016

ORDER:

1) Assailing the order dated 26.09.2016 passed in Transfer O.P.No.356 of 2015 on the file of the Principal District and Sessions Judge, Chittoor, wherein and whereunder an application filed under Section 24 of the Code of Civil Procedure, for withdrawal of O.S.No.139 of 1991 from the file of Principal Junior Civil Judge, Puttur and to transfer the same to the Court of Senior Civil Judge, Puttur to be tried along with O.S.No.77 of 2007 and O.S.No.91 of 2012, was dismissed, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

2) Heard Sri V.Jagapathi, learned counsel for the petitioners and learned G.P. for Arbitration on behalf of respondents 7 and 8.

3) The facts, which lead to filing of the present Revision, are as under :-

i) The averments in the petition filed in support of the Transfer O.P.No.356 of 2015 show that R-1 herein filed the suit O.S.No.139 of 1991 on the file of Principal Junior Civil Judge Court, Puttur for grant of permanent injunction against third petitioner, R-2, R-3, one Golla Krishnaiah, R-4, R-5, one P.Audaiah @ Moddu Mangaiah, R-6, R-7 and R-8. After a full-fledged trial, the said suit was dismissed and an

appeal was preferred vide A.S.No.50 of 2003 on the file of Senior Civil Judge Court, Puttur. During appeal, the plaint was got amended by R-1 and then the matter was remanded to the trial court for recording further evidence and for disposal. The said suit is pending cross-examination of R.W.1.

ii) It further shows that the petitioners filed O.S.No.91 of 2012 on the file of Senior Civil Judge Court, Chittoor against R-7 to R-14 for declaration of right and title and for consequential relief of permanent injunction and the said suit is pending for trial.

iii) Further the third petitioner, represented by his power of attorney, filed O.S.No.77 of 2007 on the file of the Senior Civil Judge Court, Puttur for declaration of right and title and for permanent injunction orders and the said suit is at the stage of arguments.

iv) It is submitted by the petitioners that the schedule property in all the three suits being one and the same; the issues involved are directly or indirectly one and the same and the evidence already adduced and going to be adduced in all the three suits is also one and the same, it would be proper if all the three suits are tried together. The petitioners state that disposing of the three matters by different courts there is every chance of conflicting decisions and wastage of precious time of courts. The petitioners submit that ends of justice would be met if all cases are tried together.

v) R-1 filed counter denying the allegations made in the petition and contends that he is not a party in both the suits i.e., O.S.No.91 of 2012 and O.S.No.77 of 2007. When he is not a party to the suit and also he being a plaintiff in a suit for declaration of title against the Government and others being dominus-litis, cannot be compelled to contest the suit against the person, who has no claim. Further, it is said that the suit is of the year 1991 i.e., 25 years old and only to drag on the proceedings, the present petition is filed. It is submitted that they ought to have got impleaded themselves as parties to the suit instead of filing separate suits or ought to have filed counter claims in other suits. He stated that the subject matter of suits are different and parties are different and if all the three suits are clubbed, parties have to be again given an opportunity to file their pleadings as against the pleadings in the other suits and it relegates the respondent to original position, which he stood as on date of filing of the suit in O.S.No.139 of 1991. It is further stated that even according to the petitioners O.S.No.77 of 2007 is posted for argument and in O.S.No.139 of 1991, the evidence that is going to be adduced is very limited as the same is taken up on remand. Hence, the first respondent submits that as he is not a party to the other two suits, he cannot be compelled to fight a litigation in the said suits by clubbing all the three suits.

vi) R-8 filed counter, which has been adopted by R-7, denying the allegations made in the petition. He states that O.S.No.77 of 2007 was dismissed for default on 18.06.2012 as plaintiff therein represented that he intends to withdraw the suit. Subsequently the suit was dismissed for default. He filed a petition for restoration of the suit and said I.A., is still pending enquiry. It is further submitted that O.S.No.139 of 1991 is coming for cross-examination of P.W.1, whereas O.S.No.77 of 2007 is coming for trial and O.S.No.91 of 2012 is also ripe for trial. It is submitted that the plaintiffs in all the three suits are claiming the suit schedule property basing on different documents with different cause of actions and with conflict of interest. The present petition is said to have been filed after long lapse of time as it is a collusive one. It is further submitted that if all the three suits are clubbed, it will create confusion and give a way to the petitioners and respondents to help each other, fill up the lacunae and share the benefits which cannot be permitted. Hence, he seeks dismissal of the petition.

vii) The remaining respondents i.e., R-2, R-4, R-5, R-9 to R-14 remained *exparte* while R-3 and R-8 died.

viii) After considering the rival arguments, the District Judge dismissed the petition on the ground that the petitioners have purposefully filed the Transfer O.P., only to drag on the matter and to gain time at the *fag end* of the proceedings though the matters are of

sufficiently old and out of three suits, one suit is more than 25 years old. Challenging the same, the present C.R.P. came to be filed.

4) The learned counsel appearing for the petitioners would submit that the learned District Judge erred in ignoring the fact that after dismissal of the suit in O.S.No.139 of 1991, an appeal was preferred vide A.S.No.50 of 2003, and during the pendency of the appeal an application seeking amendment of plaint was filed, which was allowed by remanding the same to the trial court for fresh disposal. But the said bundle was retained on the file of the Senior Civil Judge for more than four years and various correspondence was made with regard to pecuniary jurisdiction between the Senior Civil Judge and Principal Junior Civil Judge which the petitioners herein were not aware of the same until receipt of the notice from the Principal Junior Civil Judge. It is submitted that the learned District Judge failed to appreciate the material on record in proper perspective. It is also averred that the suit O.S.No.77 of 2007 was dismissed for default when the same was ripe for disposal and immediately a restoration petition was filed which is allowed. Hence, seeks for trail of all the suits together.

5) As seen from the record, O.S.No.139 of 1991 is pending on the file of Principal Junior Civil Judge's Court, Puttur, whereas O.S.No.77 of 2007 and O.S.No.91 of 2012 are pending on the file of the Senior Civil Judge's Court, Puttur. Out of three suits, O.S.No.139 of 1991

was filed long back claiming permanent injunction simplicitor. However, the claim in remaining both suits i.e., in O.S.No.77 of 2007 and O.S.No.91 of 2012 is for declaration of right, title, possession and for permanent injunction. The material further discloses that the claim, pleas, documents and parties in all the three suits are not similar. All the three suits are at different stages i.e., O.S.No.139 of 1991, which was remanded by the lower appellate court is for further evidence of R-1, O.S.No.91 of 2002 is at the stage of arguments and O.S.No.77 of 2007 was restored recently and the evidence has to be adduced therein. In all the three suits O.S.No.139 of 1991 is the oldest matter and if the petitioner was having any interest to get all the matters tried together, he ought to have filed a petition at an early date. Moreover, the explanation given in filing the petition at this stage cannot be considered.

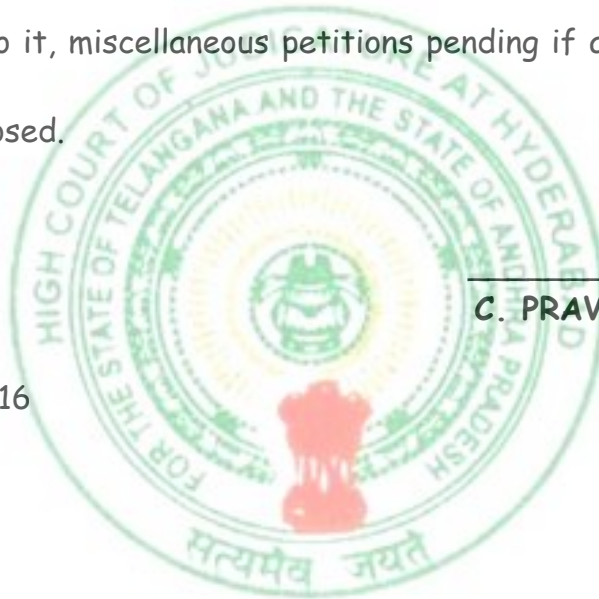
6) Further, a perusal of the order under challenge vividly discloses that the learned District Judge, after meticulously considering the subject matters of the suits, particulars of the parties and after recording cogent and convincing reasons, dismissed the application filed by the petitioners herein. The learned District Judge in the impugned order categorically held that as the parties are different, their pleas are different and cause of action in all the three suits is also different and in the event of the withdrawing O.S.No.139 of 1991 from the Court of Principal Junior Civil Judge, Puttur for transferring

the same to the Court of Senior Civil Judge, Puttur, would lead to unnecessary complications. Having regard to all the circumstances stated above, it cannot be said that the learned trial Judge has committed any error in refusing to allow the petition for transferring the suit from the Court of Principal Junior Civil Judge, Puttur to the Court of Senior Civil Judge, Puttur. Hence, I see no merits in the present Civil Revision Petition and the same is liable to be dismissed.

7) Accordingly, the Civil Revision Petition is dismissed. No costs.

As a sequel to it, miscellaneous petitions pending if any in this C.R.P., shall stand closed.

Date:16.12.2016
GM



C. PRAVEEN KUMAR, J