

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.4265 of 2016

ORDER:

Impugning the order dated 05.08.2016 of the learned Chief Judge, City Civil Court, Hyderabad, in Tr.O.P.No.2394 of 2015 under Section 24 of the Code of Civil Procedure (for short 'C.P.C.') for transfer of O.S.No.188 of 2014 of the revision petitioners as plaintiffs therein, filed for the reliefs of declaration of title, possession and for profits in relation to the plaint schedule property, which is nothing but 'A' schedule property of O.S.No.138 of 2008 filed by the transfer petitioner, no other than plaintiff of O.S.No.138 of 2008 and 2nd defendant of O.S.No.188 of 2014 supra, in saying the subject matter of 'A' schedule of the partition suit is the subject matter of the declaratory suits supra, thereby, it requires to be tried together, despite opposed by the plaintiff of O.S.No.188 of 2014, the present revision is filed.

2. It is the contention and submission in the course of hearing from the grounds of revision that the trial Court did not properly appreciate the factum of the lis involved and the scope in both the suits and went wrong in asking to club both suits, even though the plaint schedule of O.S.No.188 of 2014 is 'A' schedule of O.S.NO.138 of 2008 but for to say that

factum in O.S.No.138 of 2008, there are several defendants and several items of properties and the lis to be adjudicated is involved the lengthy and complicated questions touching several items and the only claim is the vendor of the plaintiff in O.S.No.188 of 2014 for the plaint schedule in O.S.No.188 of 2014 ('A' schedule property of O.S.No.138 of 2008) is benami for O.S.No.138 of 2008 plaintiff's testator and thereby, the trial court could not have been asked for clubbing of both suits. The respondents/plaintiffs in O.S.No.138 of 2008 and Tr.O.P. covered by the impugned order, even served, failed to attend and taken as heard. Perused the material on record.

3. Once the only issue involved in relation to the partition of the 'A' schedule property of O.S.No.138 of 2008 is the so called benami transaction. Leave about implications of the Act 1984 and its application and any bar that requires to be adjudicated on merits. Once the plaint schedule in O.S.No.138 of 2008 covers several items and not confined to the plaint schedule in O.S.No.188 of 2014 and that too, in O.S.No.188 of 2014, the plaintiff in O.S.No.138 of 2008 is no other than 2nd defendant and 1st defendant conceded to the suit claim of declaration and possession and there only the benami nature of the transactions in opposing the suit claim by the 2nd

defendant of O.S.No.188 of 2014 (plaintiff in O.S.No.138 of 2008) were to be adjudicated.

4. The clubbing of suits give many complications and also unnecessary life to the litigation covered by O.S.No.188 of 2014. Hence, the impugned order directing clubbing of both suits, while upholding the transfer from the file of XI Additional Chief Judge to II Additional Chief Judge, modified from clubbing of both suits for common trial, to simultaneous disposal of separate and independent trial of both suits by the same Court. However, for commencement of trial in O.S.No.138 of 2008, the suit proceedings in O.S.No.188 of 2014 need not be stalled.

5. Accordingly, the Civil Revision Petition is disposed of with the above modifications. No order as to costs.

6. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:04.11.2016

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