

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Civil Revision Petition No.5727 of 2015
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ORDER:

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This civil revision petition under Article 227 of the Constitution of India by the respondents in OP.no.17 of 2010 is directed against the orders dated 17.11.2015 of the learned Judge, Family Court-cum-IV Additional District Judge, Vijayawada passed in IA.No.546 of 2015 in the aforesaid OP filed under Sections 10 and 151 of the Code of Civil Procedure, 1908 ('the Code', for short) requesting to stay all further proceedings in OP.No.17 of 2010 till the disposal of OS.No.497 of 2010 on the file of the learned I Additional Junior Civil Judge's Court, Visakhapatnam.

2. I have heard the submissions of the learned counsel for the revision petitioners. Despite service of notice, none appeared for the respondent. I have perused the material record. The parties in the revision petition shall herein after be referred to as arraigned in this revision petition.

3. The facts necessary for consideration, in brief, are as follows:

The 1st revision petitioner is the 1st respondent in the aforesaid OP. He is stated to be a mentally unsound person and is suffering from Schizophrenia. The 2nd revision petitioner is the 2nd respondent in the aforesaid OP. He is the natural father of the 1st revision petitioner. The sole respondent herein, who is a minor represented by his natural mother, is the petitioner in the aforementioned OP filed seeking maintenance. According to the revision petitioners, since the 1st revision petitioner is mentally unsound he was temporarily kept in the custody and care of the parents of the respondent herein and that taking advantage of his unsound mental condition, the parents of the respondent herein gave their son i.e., the respondent in adoption to the 1st revision petitioner though he is incapable of taking any person in adoption and that the parents of the respondent herein

had taken the 1st revision petitioner to the Registrar's office and got registered a deed of adoption as if the respondent herein was adopted by the 1st revision petitioner. While so, the natural parents of the 1st revision petitioner having come to know of the said facts have taken him back to their custody from the custody of the parents of the respondent. The natural mother of the respondent filed WP.No.13784 of 2009 before this court seeking a writ of habeas corpus representing that the adoptive father of the respondent herein is missing. The said writ petition was dismissed by this court on 20.02.2009 observing in its orders as follows: '***In view of the above said fact, what is required to be proved is whether there was any adoption as such and what is the obligation on the part of the alleged detune towards the petitioner and also the right of the petitioner over the alleged detune. These are all the disputed questions that cropped up in the mind of the Court, which cannot be answered despite any amount of proof placed before this Court. Therefore, the appropriate remedy for the petitioner is to approach the competent civil court and seek redressal of his grievance where only all these questions of fact can and shall have to be determined.***'The respondent filed the OP represented by his natural mother seeking maintenance from the 1st revision petitioner *inter alia* alleging that he is his adoptive father and is bound to maintain him under facts and in law. On the other hand, the father of the 1st revision petitioner i.e., the 2nd revision petitioner got filed the suit OS.No.497 of 2010 on the file of the Court of the learned I Additional Junior Civil Judge, Visakhapatnam for declaration that the deed of adoption is null and void and consequently cancel the adoption of the respondent by the 1st revision petitioner. That suit is pending. In view of the fact that the validity of the adoption is to be decided in the comprehensive civil suit, the revision petitioners herein filed the aforementioned IA seeking stay of all further proceedings in the OP pending final disposal of the suit. That application was resisted by the alleged adopted son/respondent herein *inter alia* contending that the reliefs claimed in the two proceedings are different and that the proceedings in the OP are summary in nature and that Section 10 of

the Code is not attracted to the facts of the case. On merits, the trial Court had dismissed the petition. Aggrieved of the said orders, the present revision petition is filed.

4. While reiterating the facts which are urged in the grounds of revision, the learned counsel for the revision petitioners would submit that in view of the observations of this court in the writ orders, unless the validity of the adoption is decided the question of the alleged adoptive son claiming maintenance does not arise and that, therefore, in the facts and circumstances of the case, the trial Court ought to have granted stay of the OP as prayed for instead of dismissing the petition. Further contentions were raised also in regard to the *mala fide* intentions of the parents of the respondent herein in falsely creating a deed of adoption as if their son was given in adoption to a person who is of unsound mind.

5. Having given earnest consideration, I am of the well considered view that the validity of the adoption has to be first decided as there is a serious dispute not only about the validity of the adoption but also the capacity of the adoptive father to adopt as he was stated to be of unsound mind since suffering from Schizophrenia. That was also finding of this Court in WP.No.13784 of 2009. Further, the claim for maintenance is founded upon the cause of action which was the subject mater of controversy in the suit i.e., the challenge to the validity of the adoption and, therefore, the matter that was directly and substantially in issue in one matter is also the matter directly and substantially in issue in the other. Hence, this court finds that the consideration, namely, 'expediency for ends of justice' is very much present for exercise of jurisdiction in favour of the revision petitioners.

6. Since one of the two proceedings is not a suit, this present matter can be considered as a matter with which section 10 of the Code does not deal with. Therefore, the exercise of the inherent power under section 151 of the Code is warranted and such exercise of power does only amount to supplementing the provisions of the Code. Hence, in the well considered

view of this court, this is a fit case in which the inherent powers can be exercised to grant stay to meet the ends of justice. In deed the object of exercising the power is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel proceedings in respect of the same mater in issue.

7. Viewed thus, this Court finds that there is merit in the revision petition and the order impugned brooks interference.

8. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. As a sequel, IA.No.546 of 2015 in OP.No.17 of 2010 is allowed as prayed for grating stay of all further proceedings in OP.No.17 of 2010 till the final disposal of the suit OS.No.497 of 2010 on the file of the learned I Additional Junior Civil Judge's Court, Visakhapatnam. However, the learned I Additional Junior Civil Judge, Visakhapatnam is directed to make an endeavour to dispose of the abovementioned suit as expeditiously as possible and preferably within a period of three (03) months from the date of the receipt of a copy of this order. No costs.

Miscellaneous petitions pending, if any, in this civil revision petition shall stand closed.

M. SEETHARAMA MURTI, J

Date:23.02.2016
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