

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT

CIVIL REVISION PETITION No. 4198 of 2016

ORDER:

Vide present Civil Revision Petition, the petitioners assailed the order dated 29.12.2015 passed in I.A.No.567 of 2015 in O.S.No.550 of 2011 on the file of learned III Additional Junior Civil Judge, Guntur, whereby the aforesaid interlocutory application filed under Section 151 CPC seeking to club the above suit with suit in O.S.No.687 of 2015 for conducting common trial for effective adjudication of the real controversy has been dismissed.

Learned Counsel appearing on behalf of the petitioners/defendants submits that the respondent herein filed the suit in O.S.No.550 of 2011 for perpetual injunction, whereas petitioners herein filed suit in O.S.No.687 of 2015 for declaration of title and consequential mandatory injunction against the respondent herein. In both the suits, the issue is interlinked and interrelated, therefore, if both the suits are separately decided by the Court below, there will be a scope for conflicting of orders and therefore the Court below erred in rejecting the petition without considering the fact in proper perspective.

Learned Counsel appearing on behalf of the respondent/plaintiff submits that the petitioners herein earlier filed I.A.No.567 of 2015 for clubbing suit in O.S.No.550 of 2011 with the suit in O.S.No.687 of 2015 for conducting common trial in

order to avoid multiplicity of proceedings, however, the Court below by order dated 29.12.2015 dismissed the said application. He further submits that the petitioners herein filed suit in O.S.No.687 of 2015 after four years of the suit filed by the respondent vide O.S.No.550 of 2011 and seeks a direction from the Court below to club both the suits as noted above. The move of the petitioners by filing I.A.No.567 of 2015 is to cause delay in the suit proceedings in O.S.No.550 of 2011. Moreover the property claimed by the respondent herein is D.No.71 A&B, bearing Door No.2-25, admeasuring to an extent of 82.38 square yards, whereas the property claimed by petitioners herein is D.No.71 admeasuring to an extent of 106.81 square yards. Thus there is no common issue involved in both the suits as extents and boundaries of the properties claimed in both the suits are entirely different.

The Court below considered all the points raised before it and opined that the respondent has filed the present suit for injunction restraining the petitioners herein/defendants from interfering with his peaceful possession and enjoyment of the suit schedule property which is to an extent of 82.35 square yards of site and building therein, whereas one of the petitioners herein are shown as western boundary owners. The petitioners herein filed suit in O.S.No. 687 of 2015 during the pendency of the suit proceedings in O.S.No.550 of 2011 for declaration and consequential mandatory injunction which is a comprehensive suit, thereby it is their case that it is just and necessary to club

both the suits for conducting a common trial to avoid multiplicity of proceedings and to avoid conflicting of decisions.

For conducting common trial, the principle is that there must be same parties, same cause of action and should be same schedule property. But, from the facts recorded hereinabove, the property belonging to the petitioners is different from the property claimed by the respondent. The extent and boundaries of both the suits properties are also entirely different.

Having heard the learned Counsel on either side and having perused the material on record, I find no discrepancy or illegality in the order under revision passed by the Court below.

Finding no merit, the Civil Revision Petition is dismissed.

Miscellaneous petitions pending consideration if any in the Civil Revision Petition shall stand closed in consequence. No order as to costs.

JUSTICE SURESH KUMAR KAIT

DATED 27th December, 2016.
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