

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 3802 OF 2016

ORDER:

Heard.

2. Challenging the order dated 14.06.2016 passed by the Senior Civil Judge, Kavali, in dismissing I.A.No.195 of 2015 in A.S.No.27 of 2006 filed under Section 10 of CPC to stay the proceedings in appeal on account of pendency of S.A.No.995 of 2013, the present civil revision petition is filed.

3. The case of the petitioner is that the suit viz., O.S.No.164 of 1983 for specific performance filed by the respondents and their ancestors came to be decreed by order dated 22.02.1990 and the appeal against the said judgment and decree in A.S.No.37 of 1990 also was dismissed by order dated 14.03.1997. Further appeal being S.A.No.995 of 2013 was filed and the same is pending before this Court. As there was no stay in the second appeal, the court had executed the sale deed pursuant to the judgment and decree passed in A.S.No.37 of 1990 and possession was also delivered to the respondents.

While so, as the possession and enjoyment of the suit schedule property was being interfered with, respondents filed O.S.No.345 of 1994 praying for permanent injunction in their favour and in favour of the fourth defendant restraining defendant Nos.1 to 3 and their men from interfering with the peaceful possession and enjoyment of the plaint schedule property pending passing of final decree proceedings in O.S.No.164 of 1983 on the file of the Sub-ordinate Judge's Court, Kavali, and for allotment of properties and the same was decreed. The petitioner herein/ 8th

defendant, who is tracing his right through the first defendant in O.S.No.164 of 1983, filed the first appeal viz., A.S.No.27 of 2006 in the Court of the Senior Civil Judge, Kavali and the same is pending. Along with the said appeal, petitioner also filed impugned I.A.No.195 of 2015 under Section 10 of the CPC seeking stay of the proceedings in A.S.No.27 of 2006 contending that the second appeal viz., S.A.No.995 of 2013 is pending with respect to the subject matter of the suit; that as the second appeal is likely to be heard and decided; and that in the event the second appeal being allowed, petitioner would automatically succeed.

4. The learned Senior Civil Judge while taking into consideration of the reliefs claimed in the first appeal and the reliefs that may be granted in the second appeal held that the issue that is to be decided in the first appeal and in the second appeal are entirely different and distinct and accordingly dismissed the impugned I.A.

5. Admittedly, the subject matter of the second appeal is with regard to judgment and decree passed in O.S.No.164 of 1983, which is a suit for specific performance, whereas O.S.No.345 of 1994 is a suit filed seeking permanent injunction on the ground that the respondents are put in possession of the property pursuant to the agreement of sale, which later fortified into a sale deed on account of the court executing the sale deed in their favour. Though in both the cases the controversy relates to the same land, by no stretch of imagination it can be said that the subject matter of the proceedings are one and the same.

In other words, Section 10 has no application whatsoever in the facts of the present case. Hence, this Court does not find any infirmity in the order of the court below in dismissing the IA. This

civil revision petition does not deserve any consideration and is liable to be dismissed. However, it is needless to mention that it is always open for the petitioner to assert his right in accordance with law in the event of his succeeding in the second appeal.

The Civil Revision Petition is accordingly disposed of.
As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

JUSTICE CHALLA KODANDA RAM

August 19, 2016

LMV