

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Civil Revision Petition No.4726 of 2014
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ORDER:

This civil revision petition under Article 227 of the Constitution of India is filed by the unsuccessful petitioner/defendant assailing the order dated 11.11.2014 of the learned Senior Civil Judge, Chirala passed in IA.no.1369 of 2014 in OS.no.158 of 2013 filed by the defendant under Section 151 of the Code of Civil Procedure, 1908 requesting to club two suits viz., the instant suit OS.no.158 of 2013 and OS.no.3 of 2014 on the file of the Court of the learned Senior Civil Judge, Chirala.

2. I have heard the submissions of the learned counsel for the revision petitioner/defendant ('the defendant', for brevity) at the stage of admission. I have perused the material record.

3. The facts that lead to the filing of the present revision, in brief, are as follows:

The plaintiff brought the suit OS.no.158 of 2013, that is, the instant suit, against the defendant for grant of a preliminary decree pursuant to a simple registered mortgage deed dated 28.12.2010. The defendant is resisting the said suit. The plaintiff had also brought OS.no.3 of 2014 against the defendant for recovery of money on the foot of a promissory note dated 28.12.2010 for Rs.3,00,000/-. The defendant is resisting the said suit also. While the said two suits are pending on the file of the trial Court, the defendant filed the aforementioned application requesting to club both the suits and conduct joint trial *inter alia* contending that his defence in both the suits is the same and that, therefore, the issues that arise for determination in both the suits would be one and the same and that as a consequence, the evidence that is required to be adduced to substantiate the defence also would be common and hence, clubbing of the suits would sub-serve the ends

of justice and would avoid conflicting judgments. The plaintiff resisted the request of the defendant by filing a counter *inter alia* claiming that one of the suits is a suit for recovery of mortgage debt and the other suit is a simple money suit for recovery of money on the foot of a promissory note and, therefore, the issues involved in the suits are not common and the question of clubbing the suits does not arise. On merits and by the orders impugned, the trial Court having accepted the contentions of the plaintiff dismissed the application of the defendant. Therefore, the defendant is before this Court.

4. The learned counsel for the defendant while reiterating the pleaded case of the defendant, which is stated *supra*, would further submit that though the two suits are based respectively on a mortgage deed and a promissory note, the defence of the defendant is common and that in the circumstances stated, if the suits are clubbed the said course would sub-serve the ends of justice and that if the suits are clubbed it would obviate the necessity of adducing the same evidence a second time and that no prejudice would be caused to the plaintiff if the suits are directed to be clubbed.

5. I have given detailed and thoughtful consideration to the submissions.

6. At the hearing, the learned counsel for the defendant would submit that in one suit, affidavit of the plaintiff in lieu of examination in chief is filed and that the other suit was dismissed for default, but an application filed for restoration, within time, is pending. However, his submission is that on the restoration of the suit, which was dismissed for default, the trial Court may be directed to club both the suits and record common evidence and dispose of the suits by a common judgment to avoid conflicting judgments and to save the valuable time and money of the parties to the *lis*.

7. Since one suit is a suit on the foot of a mortgage and the other is a simple money suit based on the foot of a promissory note, in the well considered view of this Court, the ends of justice would be met if a direction is given to the trial Court to try the suits simultaneously instead of consolidating the same in case the other suit which was dismissed for default stands

restored to file.

8. Viewed thus, this Court finds that there is no merit in the request of the defendant to consolidate both the suits and conduct joint trial.

9. In the result, the Civil Revision Petition is disposed of with a direction to the trial Court to conduct separate, but, simultaneous trials in both the suits, in case the suit that was dismissed for default stands restored, and dispose of the two suits on merits separately by delivering separate judgments in both the suits on the same day, in accordance with the law.

There shall be no order as to costs.

Miscellaneous petitions, pending if any, in the CRP shall also stand dismissed.

M. SEETHARAMA MURTI, J

05.07.2016

Vjl