

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.2101 OF 2016

ORDER:

The Civil Revision Petition is filed against the order dated 09.12.2015 passed in I.A. No.2127 of 2013 in O.S. No.577 of 2009 by the XXIV Additional Chief Judge, City Civil Court, Hyderabad.

2) The revision petitioner is the 2nd respondent in I.A. No.2127 of 2013 in O.S. No.577 of 2009 covered by the impugned order dated 09.12.2015 of the learned XXIV Additional Chief Judge, City Civil Court, Hyderabad. The impugned order reads as under:

“Heard. The petitioner submitted that the subject matter of the above suit and O.S. 583/2012 is one and same and the above suit is O.S. 577/ 2009 is a comprehensive suit and prayed to club the O.S. 583/ 2012 with O.S. 577/ 2009 so as to avoid inconvenience to both the parties in recording the evidence separately and marking documents. The contention of the respondent is that the present petition is filed after chief affidavit of PW.1 filed in the suit O.S.577/2009 and the matter was coming up for cross examination. Upon perusal of the record it appears that PW.1 is not yet cross examined in O.S. 577/ 2009 and no documents are marked on behalf of the plaintiff. There is no harm in clubbing O.S. 583/ 2012 with O.S. 577/2009 as it is a comprehensive suit. Therefore petition is allowed. O.S. 583/2012 is clubbed with O.S. No.577/2009 in the interest of justice to avoid inconvenience to both the parties in conducting trials.”

Impugning the same, the respondent No.2 to the suit maintained the present revision.

3) The respondent No.1 is plaintiff in O.S. No.577 of 2009 by name P.R.Sukhdev, even served failed to attend. The respondent No.2 herein is co-defendant in the main suit and endorsed as not necessary party to the revision. Heard learned counsel for the revision petitioner and the learned counsel for the respondent No.1/ petitioner. Perused the material on record.

4) Originally, the respondent No.2 to the revision by name C.Yaswanth Rao has filed O.S. No.3971 of 2004 for declaration and for perpetual injunction against plaintiff in O.S. No.577 of 2009 by name P.R.Sukhdev for declaration of title in relation to the plaint schedule property. Said P.R.Sukhdev filed transfer petition to transfer the suit O.S. No.3971 of 2004 pending on the file of IX Senior Civil Judge, City Civil Court, Hyderabad and the same was allowed and O.S. No.3971 of 2004 was transferred to III Additional Chief Judge, City Civil Court, Hyderabad.

5) The 1st respondent to the revision maintained O.S. No.577 of 2009 for cancellation of sale deed dated 26.09.2007, for recovery of possession, damages, meanse profits and for perpetual injunction. It is while so, the respondent No.1 to the revision filed I.A. No.2127 of 2013 to club O.S. No.583 of 2012 with the comprehensive suit O.S. No.577 of 2009 filed by the respondent No.1 to the revision. Even by the time, the transfer petition filed in 2013 covered by the impugned order in O.S. No.583 of 2012, the evidence of plaintiffs was already over and it is coming for evidence of defendants. It is stated in the counter to I.A. No.2127 of 2013 that the defendants chief affidavit also filed and coming for marking of documents and for cross examination and at that stage

without appearing to face trial filed the transfer application. As per the revision grounds, it clearly shows after the evidence of defendants, the matter is reserved for judgment. Though it is one of the submissions that the said factum was brought to the notice of the lower Court by the time of passing the impugned order dated 09.12.2015, which was not reflected. Once such is the case, when O.S. No.583 of 2012 originally renumbered from O.S. No.3791 of 2004 wherein evidence completed, arguments heard and reserved for judgment, the question of transferring O.S. No.583 of 2012 to club with O.S. No.577 of 2009 does not arise, thereby the order of the lower Court is unsustainable, even otherwise taking into consideration of these facts.

6) Accordingly and in the result, the revision petition is allowed by setting aside the impugned order of the lower Court. No order as to costs.

7) Consequently, pending miscellaneous petitions, if any, shall stand dismissed.

Dr.JUSTICE B. SIVA SANKARA RAO

Dt.19.10.2016
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