

HONOURABLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No. 2035 OF 2015

DATED 21ST JANUARY, 2016

BETWEEN

Naregudem Sriram Reddy and ors

...Petitioners

And

Naregudem Papi Reddy and anr

...Respondents

HONOURABLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No 2035 OF 2015

ORDER:

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The plaintiffs in O.S.No.710 of 2008 on the file of the learned Additional Junior Civil Judge-cum-XVII Metropolitan Magistrate, Cyberabad, at Rajendranagar, are the petitioners herein. Originally suit OS.No.1035 of 2000 was renumbered as OS.No.710 of 2008 and the plaintiffs therein are the plaintiffs in O.S.No.184 of 2000, which was filed for partition and separate possession in respect of Ac.5.07 gunts of land in Sy.Nos.35/2, 36/2, 38/A, 40/3, 37/3, 39 and 48, situated at Hyderguda village, Rajendranagar Mandal, Ranga Reddy District. In the said suit for partition, the respondents/defendants filed written statement stating that not only Ac.5.07 gunts of land situated in the above stated survey numbers, but also another extent of Ac.3.39 gunts situated in Sy.Nos.41,42,47, 52 and 51 of the same village is also liable for partition. However, the suit for partition was

decreed only to the extent of Ac.5.07 gunts of land. Against the said judgment and decree, appeals in AS.Nos.582 of 2007 and 525 of 2007 are pending before this Court.

Now when the matter is coming up for cross examination of DW.5, the present application in IA.No.651 of 2014 in OS.No.710 of 2008 (originally OS.No.1035 of 2002) was filed by the plaintiffs seeking stay of all further proceedings on the ground that the subject matter is covered by the suit for injunction and appeals pending before this Court is same. This Court by order dated 16.06.2009 in ASMP Nos. 1090 and 1092 of 2008 in AS.Nos.582 & 525 of 2007 directed the parties in the appeal not to alienate or create third party interests as regards the property covered by suit schedule and those mentioned in the written statement filed by Defendants 1 and 2. Further, with regard to enjoyment of the property is concerned, it was directed that status quo obtaining as on the date of decree shall be maintained and no party shall interfere with the enjoyment of the property by the other. One more fact is that when the aforesaid appeals and suit OS.No.710 of 2008 are pending, the respondents herein who are the appellants in the aforesaid appeals pending before this Court filed OS.No.71 of 2015 before the learned District Judge, Ranga Reddy District for partition and separate possession to the extent of Ac.3.39 guntas which was originally stated to be liable for partition and the said suit is pending adjudication. It is admitted by the learned Counsel for both sides that in the present suit for injunction, temporary injunction was granted in the year 2008 and the same is continued to be in operation.

The learned Counsel for the petitioners submits that since the property to the extent of Ac.2.27 guntas covered by the present suit for injunction is the subject matter of the appeals pending before this Court and an order was passed by this Court on 16.09.2009, their suit shall be stayed.

The learned Counsel for the respondents on the other hand submits that the suit for injunction in OS.No.1035 of 2002 (renumbered as OS.No.710 of 2008) is coming up for cross examination of DW.5 and that by virtue of the temporary injunction granted in the said suit, the petitioners want to drag on the proceedings.

It is clear from the above facts that originally suit for partition covers an extent of Ac.5.07 guntas, however, the order passed by this court dated 16.06.2009 in ASMP Nos. 1090 and 1092 of 2008 in AS.Nos.582 & 525 of 2007 extends to the suit schedule property as well as the property mentioned in the written statement filed by the defendants in the suit for partition. The appeals pending before this Court arise out of the suit for partition whereas the present suit is for permanent injunction. In the circumstances, there is no need for staying the present suit though the plaintiffs in the present suit and the plaintiffs in O.S.No.184 of 2000 are one and the same. The suit schedule property in OS.No.184 of 2000 which is filed for partition and the suit schedule land in the present suit filed for injunction are entirely different from each other. In the circumstances, I concur with the order impugned in this revision passed by the trial Court, which reads as follows:

“Evidently, the subject matter of the present suit and the subject matter of OS.No.184 of 2000 from which

the appeal suits have arisen are entirely different, which is confirmed in the year 2004 itself by the petitioners themselves by way of their counter in transfer OP.No. 232 of 2004 vide Ex.R.2. All the decisions relied upon by the petitioners lay down the proposition that the stay of proceedings in a subsequently instituted suit can be granted only when the matter in issue in the two suits i.e. the previously instituted and subsequently instituted suit is directly and substantially the same. The contention of the petitioners that Section 10 does not contemplate the identity of issues between the two suits, nor does it require that the matter in issue in the two suits should be entirely the same or identical, would have been concerned had there been identity in the matter in issue. The admission by either side themselves is that OS.No. 184/2000 filed by the petitioners for partition is in respect of the land in Survey Nos. 35/2,36/2,38/a,40/3,37/3, 39 and 48, while subject matter of the present suit is in respect of the lands in Survey Nos. 41,42,47/E and 52. Thus, the subject matter in issue is entirely different, which is admitted by the petitioners themselves, as already stated by way of their counter in the transfer OP filed by the first respondent in OP.No. 232/2004. Apart from that as rightly contended by the learned counsel for the 2nd respondent, the present application is filed by the petitioners, who are aware of the appeal suits filed by the respondents in IA.Nos. 582/2007 and 525/2007, but, inspite of that continued with the proceedings in the present suit from 2007 till 18.09.2014 i.e., for nearly 7 years, by which date the evidence of the petitioners has been completed long back and the matter is at the stage of cross-examination of DW 4 and now came up with the present application, seeking stay of all further proceedings only on the ground, that appeal suits referred to above have to be disposed off and till then, the proceedings have to be stayed. As rightly contended by the learned Counsel for the respondent, it is only the petitioners who filed both the suits way back in the years 2000 and 2002 respectively and further, as contended by the learned counsel for the first respondent, the

petitioners have also opposed the transfer OP filed by the first respondent, seeking transfer of the present suit to be tried, along with OS.No.184/2000 in the year 2004 itself, cannot, after a decade, seek stay of further proceedings in the present suit which certainly amounts to abuse of process of the Court. Hence the petitioners are not entitled to the relief of stay of further proceedings claimed by them both on merits and also in view of the delaying tactics adopted by the petitioners”.

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 A.RAMALINGESWARA RAO

DATED 21st JANUARY, 2016.
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