
Between:

...

And

...

JUDGMENT PRONOUNCED ON 30.03.2016

100

1999

1999

—

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? :

2. Whether the copies of judgment may be marked to Law Reporters/Journals. :

3. Whether their Ladyship/Lordship wish to see the fair copy of the Judgment? :

—

ORDER:

The revision petitioner and the respondents 1 and 2 herein are the 6th defendant and the plaintiff 1 and 2, respectively in O.S. No.26 of 2010 and the respondents 3 to 7 herein are the other defendants in the said suit.

The revision petitioner filed I.A. No.273 of 2015 in O.S. No.26 of 2010 seeking to club both suits in O.S. No.26 of 2010 and O.S. No.60 of 2011 on the file of the Court below stating that the respondents 1 and 2 therein have filed a suit in O.S. No.26 of 2010 against the respondents

3 to 7 therein for permanent injunction. The revision petitioner also filed a suit in O.S. No.60 of 2011 against all the respondents therein for permanent injunction on the file of the same Court. He has taken the ground that in both the said suits the parties and the schedule is one and the same and the reliefs are also one and the same and the suit schedule property is the part and parcel of the schedule in O.S. No.60 of 2011 and therefore, prayed to club both the suit and tried together, in the interest of justice.

The respondents 1 and 2 therein filed counter stating that the schedule property in O.S. No.26 of 2010 is an extent of Acs.3.75 cents in R.S. No.80/1 consisting of two plots. So far as, the schedule in O.S. No.60 of 2011 is concerned, extent is Acs.5.85 cents situated in same survey number but boundaries are not common. Further, it is also stated that the property claimed by the revision petitioner is different from the property claimed by the respondents 1 and 2 in O.S. No.60 of 2011. As such, both suits cannot be clubbed together.

The learned counsel for the revision petitioner submitted that in both the suits parties are one and the same and schedule property of O.S. No.26 of 2010 is part and parcel of the schedule property in O.S. No.60 of 2011. The Court below, without proper appreciation of the facts narrated in the said application, dismissed the application erroneously therefore, the impugned order is liable to be set aside.

From a perusal of the record, it is clear that though the parties and the relief sought for therein against each other in both the suits are one and the same, the schedule of the property, its extent and the boundaries are totally different. Therefore, the Court below has categorically found that common issues does not arise for determination of the real controversy involved in the suit. Moreover, it is not possible to give a common judgment in both suits as plaintiffs and the defendants are different. Further, it is also to be kept in mind that the respondents 1 and 2 have stated that the plaint schedule property in O.S. No.26 of 2010 is not the part and parcel of the schedule property in O.S. No.60 of 2011, and at this stage, it is not possible to decide whether the plaint schedule property in O.S. No.26 of 2010 is part and parcel of the schedule property in O.S. No.60 of 2011, which can be decided during the course of trial.

In that view of the matter, I do not see any reason to interfere with the impugned order as the same does not suffer from any legal infirmity and therefore, this revision petition is liable to be dismissed. Accordingly, this revision petition is dismissed.

As a sequel, miscellaneous petitions, if any, stands closed.
There shall be no order as to costs.

JUSTICE G.CHANDRAIAH

Date: 30.03.2016
LSK