

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION Nos.1106 & 1107 of 2016

COMMON ORDER:

These two revision petitions under Article 227 of the Constitution of India are respectively filed by the plaintiffs in OS.No.493 of 2007 presently on the file of the Court of the learned III Additional District Judge, Ranga Reddy at L.B. Nagar, and the 1st defendant in OS.Nos.561 and 611 of 2008 on the file of the Court of the learned Principal Junior Civil Judge, Ranga Reddy District at L.B. Nagar, assailing the common orders dated 27.01.2016 of the learned Principal District Judge, Ranga Reddy District at L.B. Nagar, passed in T.O.P.Nos.752 and 753 of 2015 respectively filed under Section 24 of the Code of Civil Procedure, 1908, by the 1st defendant in the aforesaid two suits and the plaintiffs in OS.No.493 of 2007.

2. I have heard the submissions of Sri Thakur Singh, learned counsel appearing for the revision petitioners in both the revision petitions and of Sri T.D. Phani Kumar, learned counsel appearing for the plaintiffs in OS.Nos.561 611 of 2008, that is, respondents 1 to 3 in CRP.no.1106 of 2016 and respondents 1 and 2 in CRP.No.1107 of 2016. I have perused the material record.

3. The genesis of these CRPs may be stated as follows:

The revision petitioners in CRP.No.1106 of 2016 brought the suit- OS.No.493 of 2007 for declaration of title and perpetual injunction in respect of 1167 square yards of landed property situate in S.No.31 at Upparpally village, Rajendranagar Mandal, Ranga Reddy District. The defendants 1 and 3 and the wife of the 2nd defendant therein brought a suit for perpetual injunction in OS.no.611 of 2008 on the file of the Court of the learned Junior Civil Judge, Ranga Reddy District, in respect of 607 square yards of property, which is a part of the suit schedule property in OS.no.493 of 2007. Similarly,

the defendants 4 and 5 in OS.No.493 of 2007 brought the suit-OS.No.561 of 2008 before the said Court of the learned Junior Civil Judge in respect of 560 square yards of property, which is also a part of the plaint schedule property in OS.No.493 of 2007. Thus, OS.No.493 of 2007 is a comprehensive suit for declaration and perpetual injunction and the schedule thereof comprises the suit schedule properties in the other two aforementioned suits viz., OS.no.561 and 611 of 2008, which are now pending on the file of the Court of the learned Junior Civil Judge, Ranga Reddy District. Thus, there is no dispute that all the suits relate to the same subject matter. In the said circumstances, the plaintiffs in OS.No.493 of 2007 and the 1st defendant in the other two suits on the file of the Junior Civil Court brought the two transfer petitions-TOP.No.753 and 752 of 2015 before the Court of the learned Principal District Judge, Ranga Reddy District at L.B. Nagar, requesting to withdraw the two suits on the file of the Junior Civil Court and transfer the said two suits to the Court of the Additional District Judge for joint trial with OS.No.493 of 2007 as not only the subject matters but also the issues that fall for consideration and determination are more or less one and the same and as bringing all the suits to the file of one Court would obviate rendering conflicting judgments in the suits and would facilitate adduction of common evidence in all the suits. Those transfer petitions were opposed by the contesting defendants in OS.No.493 of 2007, who are the plaintiffs in the other two suits on the file of the Junior Civil Court. On merits and by the common order impugned in these revisions, the learned District Judge dismissed both the TOPs for the reason that the two suits on the file of the Junior Civil Court are part-heard and that the suit, OS.No.493 of 2007, was dismissed for default and was not pending on the file of the Additional District Court by the time the TOPs were instituted. Aggrieved thereof these revisions are filed.

4. At the hearing, the learned counsel for the revision petitioners would submit as follows: “The suit schedule properties in the two suits on the file of

the Junior Civil Court together constitute the suit schedule property in OS.No.493 of 2007, which is on the file of the Additional District Court. It is an admitted fact. OS.No.493 of 2007 is a comprehensive suit for declaration and perpetual injunction; whereas the two suits on the file of the Junior Civil Court are only for perpetual injunctions in respect of parts of property covered by OS.No.493 of 2007. Hence, and in view of the undisputed facts the learned District Judge ought to have granted the request in the TOPs. The learned District Judge erroneously dismissed the TOPs despite bringing to his notice that the suit-OS.No.493 of 2007 though was dismissed for default was later restored to file. Since the subject matters of the suits are the same and as the plaintiffs to the suits are claiming that they are in possession of the respective suit schedule properties and are further claiming perpetual injunctions in the three suits, it would be just and fair to bring all the suits to the file of one Court for disposal on merits to avoid conflicting judgments and to facilitate adduction of common evidence in all the three suits.”

5. Per contra, Sri T. D. Phani Kumar, learned counsel, would submit as follows: “The TOPs were instituted by suppressing the fact that OS.no.493 of 2007 was dismissed for default and by giving an impression in the pleadings therein that the said suit was pending. The suits on the file of the Junior Civil Court are at the stage of arguments after trial has concluded. At this stage it is not proper to transfer those suits which are at the advanced stage to the Additional District Court. There is no possibility to now record common evidence as evidence has concluded in the suits on the file of the Junior Civil Court. The TOPs are filed at a belated stage. The trial in the suit-OS.no.493 of 2007 has not yet commenced as on the date of the filing of these revisions. The said suit is now at the stage of recording the evidence of PW1. Hence, the learned District Judge is justified in passing the common order impugned in these revisions. Therefore, the revisions are devoid of merit and are liable to be dismissed.”

6. I have given detailed and thoughtful consideration to the facts and submissions.

7. In the first place it is to be noted that OS.No.493 of 2007 is a comprehensive suit for declaration in respect of the entire extent of 1167 square yards and to the said suit, the plaintiffs 1 and 3 in OS.no.611 of 2008 and the plaintiffs in OS.no.561 of 2008 are party defendants 1, 3, 4 & 5. OS.no.611 of 2008 was instituted in respect of 607 square yards and OS.no.561 of 2008 was instituted for 560 square yards, which extents are covered by 1167 square yards, which is the plaint schedule property in OS.no.493 of 2007. Though OS.no.493 of 2007 is a comprehensive suit for declaration, the consequential relief sought for in the said suit is a perpetual injunction. Similarly in the two suits filed by the defendants 1 and 3 and another together and defendants 4 and 5 together, the relief claimed is perpetual injunction in respect of the said suit schedule properties. Therefore, the issues that fall for determination in all the three suits insofar as they related to the reliefs of perpetual injunctions are overlapping issues and if the suits are to be tried by different fora there is a likelihood of conflicting judgments being rendered. Therefore, to avoid conflicting judgments it would be in the interests of justice and also the parties to the *lis* to bring all the suits to the file of one Court, that is, the Additional District Court where the comprehensive suit is pending. Be that as it may. Since the two earlier suits on the file of the Junior Civil Court are part-heard and are at the stage of arguments after conclusion of trials, there is no possibility at this stage to order to consolidate all the suits and conduct joint trial by one Court.

8. At the same time, it is also brought to the notice of this Court at the hearing, by producing the certified copy of the proceedings sheet in OS.no.611 of 2008 that as on 24.09.2015 that suit was at the stage of arguments and that later there is no progress in the said suit because of the stay orders granted in

these revisions. It is also brought to the notice of this Court, by producing a copy of the proceeding sheet in OS.no.561 of 2008, that on reporting no further evidence of the plaintiffs in the said suit, the plaintiffs' evidence was closed and the matter is coming for evidence on defendants' side and is adjourned to 11.11.2016. Learned counsel for the revision petitioners produced certified copy of the docket order in OS.no.561 of 2008 passed on 02.11.2016 whereby the learned Junior Civil Judge without noticing that there is a stay order granted by this Court in these revisions forfeited the right of the plaintiffs in OS.no.493 of 2007 to cross-examine PW2 in OS.no.561 of 2008 and closed the evidence of plaintiffs in the said suit and posted the suit for defendants' evidence to 11.11.2016.

9. In this background and for the reasons already assigned, this Court is of the considered view that the two suits-OS.no.561 of 2008 and 611 of 2008 can be withdrawn at this stage from the file of the Court of the learned Principal Junior Civil Judge, Ranga Reddy District at L.B. Nagar, and be transferred to the file of the Court of the learned III Additional District Judge, Ranga Reddy District at L.B. Nagar.

10. On the above analysis, both the Civil Revision Petitions are allowed and the orders impugned in these revisions are set aside and the two suits-OS.no.561 of 2008 and 611 of 2008 are withdrawn at this stage from the file of the Court of the learned Principal Junior Civil Judge, Ranga Reddy District at L.B. Nagar, and are transferred to the file of the Court of the learned III Additional District Judge, Ranga Reddy District at L.B. Nagar, where the comprehensive suit OS.no.493 of 2007 is pending for simultaneous trial and disposal by the said transferee Court in strict accordance with the procedure established by law and on merits. It is made clear that after conclusion of the trials in all the suits, the learned III Additional District Judge/ Judge of the transferee Court shall pronounce the judgments in all the suits as per the procedure established

by law on one day. In view of the fact that the suits are sufficiently old suits, the transferor Court is directed to send the duly indexed records in the aforementioned two suits to the transferee Court as expeditiously as possible. The transferee Court is directed to dispose of the three suits as directed in these orders as expeditiously as possible and preferably within a period of three months from the date of receipt of records from the transferor Court.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in these revisions, shall stand closed.

30th November, 2016
Vjl

M. SEETHARAMA MURTI, J

