

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.4627 of 2016

ORDER:

The 1st defendant is the revision petitioner. Impugning the order dated 10.12.2015 in I.A.No.211 of 2015 in O.S.No.742 of 2013 on the file of V Junior Civil Judge, City Civil Court, Hyderabad, he filed present revision.

2. The said suit was filed by the sole plaintiff against 4 defendants including the revision petitioner, for the relief of permanent injunction. Since the 1st defendant did not file written statement, he remained ex parte and therefore, he filed I.A.No.211 of 2015 seeking to set aside the same. The said I.A. was ended in dismissal. Hence, present revision is filed.

3. Heard the learned counsel for the revision petitioner/1st defendant and also the learned counsel for the 1st respondent/plaintiff. Respondents/ defendants 2 to 4 not contesting the revision vis-à-vis order before the lower Court, practically. Perused the material on record.

4. The revision petitioner/1st defendant herein maintained another suit independently as sole plaintiff in O.S.No.177 of 2013 against the plaintiff in O.S.No.742 of 2013 as sole defendant. The contest is in respect of the property of them by proceeding as if there is overlapping to ascertain under the guise of one interfering with the other. Both the suits proceeded independently, though

pending before the same Court and posting almost to the same dates for trial and enquiry, as the case may be. In this case, covered by the impugned order of the revision, the 1st defendant, who is plaintiff in O.S.No.177 of 2013 did not file written statement and chosen to remain ex parte, way back in December, 2013 and sought for setting aside the same and to receive written statement only in September, 2015, nearly two years later that was ended in dismissal. In fact, there is no limitation to file such an application. Apart from it, there is no even any bar to participate in subsequent proceedings.

5. The law is very clearly laid down by the Apex Court in *Balraj Taneja v. Sunil Madan*¹, within the scope of Order VIII Rule 10, Orders IX, XV and XVII C.P.C. In fact, the revision petitioner, who maintained O.S.No.177 of 2013 set up his case based on title for the relief of permanent injunction against the plaintiff in the revision petition covered by O.S.No.742 of 2013. When such is the case, the plaint in one case serves as written statement in another case in between them in deciding the respective suits lis by demarcation and ascertaining, if necessary by localization through survey of the respective properties through commissioner appointment. In that way, it is just for the trial Court to club both suits. Insofar as O.S.No.177 of 2013 concerned, the revision petitioner as plaintiff was cross examined by plaintiff and plaintiff in O.S.No.742 of 2013 as defendant therein was also examined and

¹ AIR 1999 SC 3381

cross examined but for in O.S.No.742 of 2013, the plaintiff was not cross examined by the contesting 1st defendant/ revision petitioner herein, for the fact that the other defendants 2 to 4 of O.S.No.742 of 2013 are not disputing the entitlement of the plaintiff practically by any contest. Thereby, it is just in directing the lower Court by setting aside the impugned order dated 10.12.2015 in I.A.No.211 of 2015 in O.S.No.742 of 2013 and by allowing the same to the limited extent.

6. Accordingly and in the result, the Civil Revision Petition is disposed of, as follows:

The trial Court shall club both the suits and read the plaint in O.S.No.177 of 2013 as written statement in O.S.No.742 of 2013 and vice versa and also to read the evidence of plaintiff in O.S.No.742 of 2013 on P-series as PW.1 and the other witnesses in continuation to it and the documents exhibited in A-series and by permitting cross examination and evidence of the 1st defendant in O.S.No.742 of 2013 to the extent not covered if at all by reading the evidence already on record in O.S.No.177 of 2013 mentioning as PW.1 to treat as DW.1 by so describing by virtue of this order and other witnesses in continuation to it and the documents marked therein in A-series as B-series respectively and by virtue of this order give common disposal if necessary by recalling any witness to the

limited scope without any further additional pleadings from the existing issues. The trial Court shall dispose of both suits, preferably within three months, from the date of receipt of a copy of this order.

No order as to costs.

6. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:08.12.2016
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