

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.5975 of 2016

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed by the unsuccessful petitioner assailing the orders, dated 19.10.2017, of the learned Chief Judge, City Civil Court, Hyderabad, passed in Tr.OP.No.2597 of 2015.

2. I have heard the submissions of Sri R.A. Achuthanand, learned counsel for the petitioner and of Sri P. Gangaiah Naidu, learned senior counsel representing Smt. Bhanu Priya, learned counsel for the respondent. I have perused the material record.

3. To begin with, it is to be noted that by the impugned order, the Court below refused to grant the request of the petitioner for transfer of a suit.

4. The case of the petitioner is this: 'The petitioner filed OS.No.294 of 2015 on the file of the Court of the learned XXIV Additional Chief Judge, City Civil Court, Hyderabad. The said suit was filed against the respondent herein for declaration of ownership of a house property bearing no.16-2-51 situate at Akber Bagh, more fully described in the schedule annexed to the plaint. The respondent filed OS.No.270 of 2008 on the file of the Court of the learned XVII Senior Civil Judge, City Civil Court, Hyderabad, against the petitioner for ejectment and recovery of arrears of rent, mesne profits and other reliefs in respect of the very same property, that is, property bearing municipal no.16-2-51 (part) admeasuring 250 Square Yards situate at Akber Bagh morefully described in the schedule annexed to the plaint in the said suit. In the suit filed by the petitioner a comprehensive relief of declaration as well as a relief of perpetual injunction were sought in respect of the same property, which is the subject matter of the suit filed by the respondent. The parties to both the

suits are same. The respective contentions of the parties are also same. Therefore, to avoid conflicting judgments both the suits are to be tried by one Court. Hence, the transfer petition is filed before the learned Chief Judge, City Civil Court, Hyderabad, seeking transfer of OS.No.270 of 2008 filed by the respondent from the file of XVII Senior Civil Court, City Civil Court, Hyderabad, to the file of the Court of the learned XXIV Additional Chief Judge, City Civil Court, Hyderabad, to be tried along with OS No.294 of 2015 already pending on the file of the said Court.'

5. Per contra, the case of the respondent is this: 'The transfer petition is filed with the sole intention of protracting the litigation. The trial of both the suits by one Court is necessary if only the causes of action are either similar or identical or common. There are no similarities in the causes of action in the two suits. The suit filed by this respondent is for ejectment and recovery of arrears of rent, whereas the other suit filed by the petitioner is for declaration of title on the basis of adverse possession and for perpetual injunction. The suit for declaration of title based on adverse possession is not maintainable in view of the decisions of the Supreme Court and High Court. No relief for declaration of title on the basis of adverse possession can be sought as per the settled legal position. Hence, the suit itself filed by the petitioner is liable for dismissal. Since that suit itself is not maintainable, the question of transferring one suit from one Court to the other Court for simultaneous or joint trial of both the suits does not arise. Hence, the transfer petition is also liable for dismissal.'

6. On merits and by the orders impugned in the revision, the learned Chief Judge dismissed the transfer petition *inter alia* recording a finding that the success of the suit, OS.No.294 of 2015, filed by the petitioner for declaration of title and for perpetual injunction is itself doubtful and that the causes of action in both the suits are distinct and different and that no common

questions of law and fact are involved in the two suits. Aggrieved thereof, the petitioner, who is the plaintiff in OS.No.294 of 2015, filed this revision petition.

7. At the hearing, the learned counsel for the petitioner and the learned senior counsel for the respondent reiterated the respective contentions of the parties.

8. Be it first noted that both the suits relate to the property with the same house/ municipal number. The respondent herein filed OS.No.270 of 2008 on the file of XVII Senior Civil Court, City Civil Court, Hyderabad, for ejectment and recovery of arrears of rent and mesne profits in respect of the house property bearing no.16-2-51 part situate at Akber Bagh admeasuring 250 Square Yards, whereas the petitioner herein filed OS.No.294 of 2015 against the respondent for declaration of title and perpetual injunction in respect of the very same property, that is part of premises bearing no.16-2-51 comprising of three rooms, kitchen, WC bath and open space admeasuring 500 Square yards. One of the contentions before this Court is that in the event the suit for declaration of title is decreed, as a sequel, the suit for ejectment and other reliefs is to be dismissed. In view of the pleadings of the parties and the issues that fall for determination in the two suits, it is obvious that the findings on issues in one suit will have a bearing on identical/ inter related issues involved in the other suit. Whether the suit for declaration of title on the basis of adverse possession is maintainable or not is a question which cannot be pre judged in an application seeking transfer of one of the two suits. Clearly the learned Chief Judge was in error in expressing a doubt about the success of the suit in a transfer petition and such observation in the impugned order is uncalled for and unwarranted. Be that as it may. One suit is of the year 2008 and the other suit is of the year 2015. Though the causes of action are different, as already noted, the properties are more or less common. Similarly, the respondent's case in his suit is his defence in the petitioner's suit and the

petitioner's case in her suit is her defence in the other suit of the respondent. Therefore, the respective contentions of the parties are common and the evidence they are likely to adduce in support of their respective contentions in both the suits would also be common. As already noted, the findings on the issues in the comprehensive suit will have a bearing on the identical/inter related issues involved in the suit for ejectment and other reliefs. Therefore, bringing both the suits to the file of one Court would be convenient to both the parties and would obviate the necessity of adducing the same evidence twice in both the suits. Further, if both the suits are brought to the file of one Court, the said course would not only help the parties in saving their time and money but also in avoiding conflicting judgments. Viewed thus, this Court finds that the request in the revision petition merits consideration and that the order impugned is liable to be set aside.

9. In the result, the Civil Revision Petition is allowed and the order, dated 109.10.2016, of the Learned Chief Judge, City Civil Court, Hyderabad, passed in Tr.OP.No.2597 of 2015 is set aside. As a sequel, the said Tr.OP is allowed and OS.No.270 of 2008 on the file of XVII Senior Civil Court, City Civil Court, Hyderabad, is withdrawn from the file of the said Court and is transferred to the file of the XXIV Additional Chief Court, City Civil Court, Hyderabad, to be tried jointly or simultaneously along with OS.No.294 of 2015 on the file of the transferee Court. The transferor Court is directed to forthwith transmit the duly indexed record of the suit on its file to the transferee Court within two weeks from the date of receipt of a copy of this order. On receipt of the record, the transferee Court shall endeavour to try and dispose both the suits as expeditiously as possible, preferably within two months thereafter.

Miscellaneous petitions pending, if any, shall stand closed.

04.10.2017
Vjl

M. SEETHARAMA MURTI, J