

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 636 OF 2017

ORDER:

The order dated 23.12.2016 passed by the learned Principal District Judge, Nellore in Transfer OP No. 368 of 2016, refusing to transfer O.S.No.266 of 2012 pending adjudication on the file of learned First Additional Junior Civil Judge, Nellore, to be clubbed and tried along with O.S.No.54 of 2016 pending trial on the file of learned First Additional Senior Civil Judge, Nellore, is challenged in the present Civil Revision Petition.

Brief facts are that: O.S.No.266 of 2012 is filed by the first respondent herein seeking eviction of second respondent herein. The subject suit is at the stage of recording evidence. At that stage, the petitioner herein filed suit O.S.No.54 of 2016 against the defendant who is first respondent herein and plaintiff in O.S.No. 266 of 2012 seeking declaration and consequential injunction against the suit schedule property in O.S.NO. 266 of 2012. The suit schedule property in O.S.No.266 of 2012 and O.S.No.54 of 2016 is one and the same. On an earlier occasion, the petitioner had made an attempt to implead herself as party respondent to O.S.No.266 of 2012 and the same came to be denied, setting aside I.A.No.1058 of 2012 ordered by the Court below in Civil Revision petition No. 4334 of 2014. The said order has become final. The petitioner having failed in her attempt to

implead herself as party respondent to O.S.No.266 of 2012 had filed O.S.No.54 of 2016. One of the pleas as set out in Para 7 of O.S.No.54 of 2016 reads as follows:

“ It is further submitted that on 16.4.2009 a registered lease deed was executed by plaintiff's husband who is K.S.S. Katib Hussaini @ Baba and others in favour of Ragilla Ramakrishna and delivered possession thereof to him and again on 16.09.2010 a registered lease deed was executed by plaintiff's husband and others in favour of Ragilla Rqamakrishna and on 16.09.2010 a registered mortgage deed was executed by her husband and others in favour of Ragilla Ramakrishna in respect of shop premises and again on 21.06.2011 registered mortgage deed was executed by plaintiff's husband and others in favour of Ragilla Ramakrishna and subsequently on 06.05.2011 a registered relinquishment deed executed by plaintiff's husband and Syed Kuthiyar Peera and Syed Taharunnisa begum in favour of plaintiff in respect of shop premises relinquishing their right therein. On 13.06.2011 a registered rectification deed was executed by her husband and others in favour of plaintiff and again on 20.06.2011 registered relinquishment deed Ratification deed was executed by Syed Rafath Hussaini and others in favour of plaintiff and thus plaintiff became the absolute owner of the shop premises. On 21.06.2011 plaintiff executed a registered mortgage deed in favour of Ragilla Srinivasulu and Ragilla Ramakrishna in respect of the plaint schedule shop. The said Ragilla Rama Krishna is continuing as a tenant of the plaint schedule shop room.”

The sum and substance of the above quoted para discloses that the petitioner has created claim with respect to the title of the plaint schedule property in O.S.No.266 of 2012. It is also significant to note that in O.S.No.266 of 2012 the second respondent herein who is arrayed as defendant in the said suit had taken a plea disputing the right, title and ownership of the first respondent herein/plaintiff in the said suit. Though there is commonality with respect to the suits schedule property, the relief

claimed in both the suits are independent and in that view of the matter, the learned District Judge refused to club and try both the suits together. It may also be noted that except the suits schedule property is one and the same, there is no other aspect which is common. In suit O.S.No.54 of 2016, the petitioner is not seeking any relief against the defendant in O.S.No.266 of 2012. Apart from that, the above quoted para No.7 from O.S.No.54 of 2016 would go to show that the intention of the plaintiff/petitioner is to support the case of the defendant in O.S.No.266 of 2012. Be that as it may, as there is no commonality of relief, which is required to be considered, and as parties are also not common, the order refusing to transfer O.S.No.266 of 2012 to be clubbed and tried along with O.S.No.54 of 2016 cannot be found fault. It may also be noted that the claim of the petitioner is, not to transfer O.S.No.54 of 2016 to be clubbed and tried along with O.S.No.266 of 2012, but vice versa. Obviously, filing of present transfer application is only to cause delay the process of deciding O.S.No.266 of 2012.

For the foregoing reasons and circumstances stated hereinabove, the very transfer of suit OS No. 266 of 2012 lacks bonafides and as such rightly dismissed by the Court below. It does not call for any interference by this Court there being no illegality and infirmity.

The Civil Revision Petition is dismissed accordingly.
Miscellaneous petitions pending consideration if any in the Civil
Revision Petition shall stand closed in consequence. No order as
to costs.

JUSTICE CHALLA KODANDA RAM

DATED 20TH FEBRUARY, 2017.
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