

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.1330 OF 2017

ORDER:

1 This Civil Revision Petitions is filed under Article 227 of the Constitution of India challenging the order dated 17.01.2017 passed in I.A.No.1021 of 2016 in O.S.No.620 of 2015 on the file of the Court of the X Additional Chief Judge, City Civil Court, Hyderabad, wherein and whereby the petition filed by the petitioner under Order 15 Rule 1 CPC was dismissed.

2 The learned counsel for the petitioners challenged the impugned order on the following grounds: 1) The Court below has not considered the scope of Order 15 Rule 1 CPC in right perspective and dismissed the petition on erroneous grounds, 2) The Court below failed to consider that the respondent admitted the Will dated 21.12.1998, therefore, the petitioners are entitled to a decree without going into the trial of the case, and 3) The impugned order is liable to be set aside as there is ex facie illegality on the face of it.

3 Per contra, the learned counsel for the respondent submitted that the respondent did not admit the Will dated 21.12.1998 and hence the petition is not maintainable either on facts or in law. He further submitted that the trial Court assigned cogent and valid reasons to its findings and hence there are no grounds, much less valid grounds to interfere with the impugned order.

4 The facts which are relevant for disposal of the present Civil Revision Petition are as follows:

5 Petitioners are the daughters and the respondent is the son of late I. Ranga Rao. The father of the petitioners and the respondent purchased an open plot to an extent of 200 sq. yards from one C.Madusudan Reddy under a registered sale deed dated 22.11.1965. Over the said plot, the said Ranga Rao constructed a house consisting of only ground floor bearing D.No.2-2-1105/9/3 with his own money. The respondent purchased an undivided extent of 100 sq. yards from out of the 200 sq. yards and rights on terrace from his father under a registered sale deed dated 07.04.1990 and constructed first floor which is house bearing D.No.2-2-1105/9/3/1. The respondent filed written statement denying the claim of the petitioners. During the pendency of the suit, the petitioners filed I.A.No.1021 of 2016 under Order 15 Rule 1 CPC to pass a decree in their favour without going into the trial of the suit, alleging that the respondent has admitted their claim. However, the trial Court dismissed the said petition. Hence the present Civil Revision Petition by the unsuccessful petitioners.

6 It is the case of the petitioners that Ranga Rao, during his lifetime, executed a Will dated 22.12.1998 creating life interest in favour of the mother of the parties to the proceedings and vested remainder in favour of the petitioners. Ranga Rao died on 17.01.2000. The mother of the petitioners and the respondent died on 18.12.2003. The petitioners filed O.S.No.620 of 2015 against the respondent on the file of the Court of the X Additional Chief Judge, City Civil Court, Hyderabad for declaration that the petitioners are the absolute owners of the suit schedule property consisting of ground

floor portion of house bearing D.No.2-2-1105/9/3 and to direct the respondent to deliver the same to them.

7 The points that fall for consideration are

- 1) Whether the petitioners satisfied the ingredients of Order 15 Rule 1 CPC? and
- 2) Whether the findings recorded by the trial Court are not sustainable?

8 Both the points are intertwined with each other and hence I am inclined to address these two points simultaneously in order to avoid recapitulation of facts.

9 Establishment of the ingredients of Order 15 Rule 1 CPC is *sine qua non* to grant the relief sought for by the petitioners. Before advertng to the facts of the case, it is apposite to refer to order 15 Rule 1 CPC in order to appreciate the rival contentions of the parties, which reads as under:

Parties not at issue:- Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the court may at once pronounce judgment.

10 A perusal of the above provision of law clearly demonstrates that if the Court subjectively satisfies that the parties are not at an issue on any question of law or fact, the Court can pass a decree at the first hearing of the suit without conducting trial in usual manner. To put it in a different way, if the parties are not at *consensus ad idem* either on facts or in law, the Court cannot pass a decree at the first hearing itself. A perusal of the above provision clearly indicates that if the Court, after applying its mind to the facts of the case, arrives at a conclusion that the defendant admitted the facts pleaded by the

plaintiff, there is no necessity to frame issues and conduct trial in usual manner, except to pronounce judgment. That is the underlying object of Order 15 Rule 1 CPC. If the defendant makes an unqualified admission to the facts and law pleaded by the plaintiff, then the plaintiff can press into service Order 15 Rule 1 CPC.

11 Let me consider the facts of the case on hand in the light of the above legal principle.

12 In a suit for declaration, the plaintiff may succeed or fail basing on the strength or weakness of his case. There is no much controversy with the proposition of law that the plaintiff is not entitled for the relief of declaration basing on the laches or lacunae on the part of the defendant. It is needless to say that in a suit for declaration the plaintiff has to establish his case by preponderance of probabilities. The petitioners herein are claiming the suit schedule property basing on registered sale deed dated 21.12.1998 purported to have been executed by late Ranga Rao in their favour. It is needless to say that a duty is cast on the propounder of the Will to dispel the suspicious circumstances surrounding the execution of the Will. In order to succeed the suit, the petitioners have to establish the execution of the Will by late Ranga Rao in sound and disposing state of mind by examining at least one of the attestors of the Will in view of Section 68 of the Indian Evidence Act and Section 63 of the Indian Succession Act.

13 It is the case of the petitioners that the respondent admitted that they their father executed the Will dated 21.12.1998 in their favour, therefore, they are automatically entitled to a decree in view of

Order 15 Rule 1 CPC. The respondent filed counter in the I.A reiterating the stand taken by him in the written statement. The respondent has taken a specific stand at para No.7 of the written statement as follows:

“The defendant submits that the Defendant had addressed a letter dated 14.07.2015 to the plaintiff No.3, wherein the defendant brought to the notice of plaintiffs that his father late I. Ranga Rao executed another Will after the date of the Will i.e. after 21.12.1998, in defendant’s favour, bequeathing the House No.2-2-1105/9/3 and that as the subsequent Will conceals the earlier Will dt:21.12.1998.....”

14 At para No.14 of the written statement the respondent has taken the following stand:

“The defendant submits that the defendant helped his father financially in performing the marriages of the 2nd and 3rd plaintiffs herein. Defendant further submits that the contention of the plaintiffs that the defendant will honour the registered Will of his father I. Ranga Rao and give the ground floor portion of the property to the plaintiffs though they are entitled according to the registered Will of Sri I.Ranga Rao, is a contention raised basing on a Will which is not been executed by the father of the plaintiffs and the defendant. Hence there is no cause of action for filing the suit”

15 A perusal of the above portion of Para No.7 of the written statement clearly reveals that the respondent specifically denied the claim of the petitioners. It is also clear from the above portion of the written statement that the respondent has taken a specific stand in the written statement that late Ranga Rao executed another Will in his favour.

16 At the time of arguments, the learned counsel for the petitioners strenuously submitted that the respondent has not produced, before trial Court, the Will alleged to have been executed by late Ranga Rao in his favour. He further submitted that non-filing of the Will by the respondent on which he places reliance itself indicates that there is

no defence to the respondent and hence no useful purpose will be served by conducting trial in the suit.

17 The core contention of the learned counsel for the petitioners is that it is not a fit case to go for trial except to pronounce the judgment in favour of the petitioners. The learned counsel for the petitioners advanced argument in such a way and manner as if the respondent admitted the claim of the petitioners or alternatively the respondent failed to prove the existence of the alleged Will, therefore, the petitioners are entitled to the relief.

18 In para No.7 of the written statement, the respondent has taken a specific stand that the petitioners have taken away the Will executed by late Ranga Rao in his favour. Whether the stand taken by the respondent is sustainable or not cannot be decided while deciding the interlocutory application. If this Court expresses any opinion with regard to the genuineness or credibility of the stand taken by the respondent, the same may cause prejudice to one of the parties to the proceedings. I have carefully scanned the counter as well as the written statement filed by the respondent in order to ascertain prima facie whether the respondent admitted execution of the Will dated 21.12.1998. The court has to consider the entire averments made in the counter or written statement in order to ascertain the specific stand taken by the party. The Court cannot place reliance on a stray sentence and jump into a conclusion in one way or other as such an approach is impermissible under law. The respondent has not admitted the entire case of the petitioners. On the other hand, the respondent introduced a specific stand that his

father executed another Will in his favour. When it is brought to the notice of the Court about the existence of two Wills, that itself ostensibly indicates that there is a lis between the parties. If the respondent in this case had in unequivocal terms admitted the execution of the Will dated 21.12.1998 in favour of the petitioners there may not be any justification on the part of the trial Court in dismissing the petition. The material placed before the Court clinchingly establishes both parties are claiming the property basing on two Wills purported to have been executed by late Ranga Rao. Even as per the admitted case of the petitioners, they have to pay an amount of Rs.20,000/- to the respondent in pursuance of the Will dated 21.12.1998. The petitioners themselves have taken a specific plea that the respondent refused to receive the demand drafts for the said amount. This itself clearly indicates that the respondent openly more particularly to the knowledge of the petitioners is disputing the legality of the Will dated 21.12.1998.

19 The petitioners pleaded that they are entitled to the suit schedule property by virtue of Will dated 21.12.1998. The respondent denied the recitals of the said Will. When the defendant denies the claim of the plaintiff, the Court has to frame necessary issues in order to adjudicate the lis involved in the suit effectively. An ordinary prudent man, by going through the recitals of the written statement and the counter would certainly come to a conclusion that there is no *consensus ad idem* between the parties. On the other hand any ordinary prudent man will certainly come to a conclusion that the parties are at loggerheads. In such circumstances, the petitioners are not entitled to take shelter under Order 15 Rule 1 CPC, thereby

preventing the respondent to put forth his legitimate and legal grievance. The word ‘parties are not at issue’, as employed in Order 15 Rule 1, means and includes that the parties are at *consensus ad idem* on the facts and law.

20 To substantiate the argument, the learned counsel for the petitioners placed reliance on the ratio laid down in ***Raghava Constructions, Hyderabad vs. Chitram Movies, Hyderabad***¹ wherein this Court held at Para No.24 as follows:

“24. Learned Senior Counsel for the respondent has also urged that the judgment and decree passed by the trial Court can be said to be one which is passed under Rule 6 of Order 12 of Code of Civil Procedure. Rule 6 of Order 12 of the Code empowers the Court at any stage of the suit, where admissions of fact have been made, either in the pleading or otherwise and without waiting for the determination of any question between the parties, to make such order or give such judgment as it may think fit, having regard to such admissions. Similarly, Rule 1 of Order 15 of the Code enables a Court to pronounce its judgment at once where at the first hearing of a suit, it appears that the parties are not at issue on any question of law or of fact. The rationale behind these provisions is not far to seek. A judgment and decree can be passed by the Court if the parties are not at issue and they admit of all facts and circumstances pleaded in the case before it. But any such order or judgment must be just, fair and reasonable. Hence, the Court is required to apply its mind to the facts and then pass the order but it can not do so mechanically.....”

21 Even as per the principle enunciated in the case cited supra, two points can be deduced, viz., 1) If the defendant admits the case of the plaintiff, then the Court can pass a decree, and 2) Before passing of decree under Order 15 Rule 1 CPC, the Court has to apply its mind to the facts and circumstances of the case on hand. As observed earlier, the respondent has not admitted the claim of the petitioners. Therefore, the decision, relied on by the learned counsel for the petitioners, is no way helpful to the petitioners. The trial Court has considered the facts and circumstances of the case on hand minutely and arrived at a conclusion that the relief sought for by the petitioners falls outside the purview of Order 15 Rule 1 CPC. The trial Court has assigned reasons much less cogent and valid reasons to its

¹ 2012 (5) ALD 349 (DB)

findings. I am fully endorsing the findings recorded by the trial Court. There is no illegality, irregularity or impropriety in the impugned order warranting interference of this Court while exercising jurisdiction under Article 227 of the Constitution of India. Therefore, the Civil Revision Petition is liable to be dismissed as devoid of merit.

22 In the result the Civil Revision Petition is dismissed at the stage of admission. No order as to costs. Consequently, miscellaneous petition if any pending in this Civil Revision Petition shall stand closed.

Date: 31st March, 2017
Kvsn

T. SUNIL CHOWDARY, J

