

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.798 of 2017

ORDER:

The Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the unsuccessful petitioner/1st defendant, assailing the order, dated 31.01.2017, of the learned IV Additional Rent Controller-cum-XVI Junior Civil Judge, City Civil Court, Hyderabad, passed in I.A.(SR).No.90 of 2017 in O.S.No.2326 of 2010.

2. I have heard the submissions of *Sri Vedula Srinivas*, learned senior counsel appearing for the Revision petitioner/1st defendant ('1st defendant', for brevity), and of *Sri Srisharan Telaprolu*, learned counsel for the 1st respondent/plaintiff ('plaintiff', for brevity). The 2nd respondent herein/2nd defendant is stated to be not a necessary party. I have perused the material record.

3. The facts, which lie in a narrow compass, in brief, are as follows: "The plaintiff brought the suit against the defendants including the 1st defendant for perpetual injunction simplicitor in respect of house properties, situated at Road No.12, Banjara Hills, Hyderabad, more fully described in the schedule annexed to the plaint. The 1st defendant is resisting the said suit by filing a written statement. After the closure of the trial, the suit is coming up for hearing the arguments. At that stage, the 1st defendant filed the afore-stated interlocutory application under Order XIV Rules 3 & 5 of the Code of Civil Procedure, 1908, requesting the trial Court to frame the additional issues, which are reproduced verbatim hereunder:

- 1) The Plaintiff's claim is basing on the title?
- 2) Whether the title is carried to the Plaintiff?
- 3) Whether right to sue survives between Plaintiff and Defendant No.1? and
- 4) Whether Plaint discloses cause of action the Defendant No.1?"

The said petition was resisted by the plaintiff by filing a counter. On merits and by the order impugned in this Revision, the trial Court dismissed the petition of the 1st defendant. Therefore, the 1st defendant is before this Court.

4. Learned senior counsel for the Revision petitioner/1st defendant would submit that the suit for perpetual injunction is based on title as is evident from the averments of the plaint and that in the written statement, the 1st defendant disputed the identity of the property and that, therefore, proposed additional issues, aforementioned, would arise for determination in the suit, though the suit is filed for perpetual injunction. He would alternatively submit that even if the additional issues, as proposed by the 1st defendant, need not be framed, the trial Court may be directed to frame an appropriate issue for determination of incidental title of the plaintiff in respect of the suit property and then determine the dispute involved in the *lis* once and for all.

5. Learned counsel for the 1st respondent/plaintiff would submit as follows:

The suit of the plaintiff is of the year 2010 and it is a suit for perpetual injunction simplicitor. During the pendency of the suit, the 1st defendant filed a suit in O.S.No.159 of 2016 for declaration of title in respect of the property being claimed by him and the said suit is pending on the file of III Additional Chief Judge, City Civil Court, Hyderabad. Earlier, the 1st defendant made an attempt for transfer of the said suit by filing a transfer petition and for bringing both the suits to the file of one Court for joint trial. The said request was refused by the Court below and the said order was confirmed by this Court in a Civil Revision Petition observing *prima facie* that the properties covered by the two suits are different. Thereafter, the 1st defendant filed an application for

rejection of the plaint and the same was dismissed. In a Revision filed before this Court challenging the said order, permission was sought to withdraw the Revision and adduce evidence. Later, the present petition is filed belatedly at the stage of arguments. The 1st defendant is dragging on the matter by filing petitions after petitions. In a suit for perpetual injunction, the only issue to be considered and decided is with regard to the settled possession of the plaintiff as on the date of the suit and the entitlement of the plaintiff to a decree for perpetual injunction prayed for. Therefore, the additional issues, which are now proposed by the 1st defendant do not arise for determination in the instant suit. The trial Court is justified in passing the impugned order.'

6. I have given earnest consideration to the facts and submissions.

7. The law is well settled that when a suit for perpetual injunction is filed on the basis of settled prior possession and the possession as on the date of suit, the issue as to whether the plaintiff would be entitled to perpetual injunction as sought for in the suit has to be determined only after considering the rival claims with regard to possession of the parties over the suit schedule property, whereas, if the suit for perpetual injunction is one wherein the title is traced and a decree for perpetual injunction is sought on the basis of possession based on the title, the trial Court, while considering the comprehensive issue as to whether the plaintiff would be entitled to the perpetual injunction as prayed for in respect of the suit schedule property, may examine incidentally the title in respect of the suit schedule property, if the facts of the case warrant such incidental examination of title to the suit property either for arriving at a just decision on the issue settled for determination in the suit or for effectively adjudicating the *lis* and giving a quietus to the *lis* once and for all. Therefore, the question as to whether the examination of incidental

title in respect of the suit property is necessary in a suit for perpetual injunction depends upon the facts and circumstances of each case. In this back drop of legal position, which is settled and undisputed, this Court, on examination of the additional issues, which are proposed by the 1st defendant, finds that none of the said issues are properly framed and, therefore, there is no need to direct the trial Court to frame any such additional issues that are proposed in the application filed by the 1st defendant. Viewed thus, this Court finds that the revision can be dismissed, however, with certain observations, which would sub-serve the ends of justice.

8. In the result, the Civil Revision Petition is dismissed, subject to observation that the trial Court is at liberty to decide the principal issue settled for determination in the suit in strict accordance with facts, established procedure and the legal position applicable to the case and that if necessary, by examining the incidental title in respect of the suit schedule property, if the facts of the case warrant such examination and such incidental examination of title in respect of the suit schedule property becomes absolutely essential for effectively adjudicating the *lis* and deciding the principal issue settled for determination in the suit.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, in this Civil Revision Petition, shall stand closed.

JUSTICE M. SEETHARAMA MURTI

Date: 18th August, 2017

Note: Issue C.C. by 30.08.2017.

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108

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