

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.1795 of 2017

ORDER:

Heard the learned counsel for the petitioner and Sri N.V. Anantha Krishna, learned counsel for the respondents.

2. This Revision Petition is filed assailing the order dt.08-02-2017 in I.A.No.269 of 2016 in O.S.No.33 of 2012 of the III Additional District Judge, Bhimavaram.

3. The said application was filed by the petitioner herein to club O.S.No.33 of 2012 with O.S.No.83 of 2010 which was also on the file of the said Court and for conducting common trial.

4. The petitioner herein and 1st respondent entered into an agreement of sale originally on 19-04-2007 for sale of Ac.0.93 cts in R.S.No.467/3 of Bhimavaram for Rs.1,20,60,000/-. The 3rd respondent herein was also a party to the said agreement of sale. Later the said agreement of sale was substituted by another sale agreement dt.14-12-2007 for a reduced consideration. For a portion of the land covered by the said agreements, three separate registered sale deeds were executed on 14-09-2009 for Ac.0.20 cts in Doc. No.2862 of 2009, Ac.0.10 cts through sale deed dt.16-09-2009 vide Doc. No.2898 of 2009 and another for Ac.0.10 cts vide sale deed dt.16-09-2009 being Doc. No.2899 of 2009. It is not in dispute that the actual extent on measurement was found to be Ac.0.87 cts only and not Ac.0.93 cts as was originally agreed between the parties.

5. Petitioner then filed O.S.No.83 of 2010 against the respondents for specific performance of agreement of sale dt.14-12-2007 stating that the respondents had already executed sale deed for an extent of Ac.0.50 cts out of Ac.0.86 cts and that they ought to execute a sale deed for an extent of Ac.0.36 cts.

6. The respondents filed O.S.No.33 of 2012 against the petitioner alleging that a sum of Rs.41,20,000/- is payable to the respondents with interest thereon towards the sale consideration under the above sale deeds since the petitioner had not paid the sale consideration thereunder.

7. Written statements were filed and issues were also framed in both the suits by the III Additional District Judge, Bhimavaram.

8. Thereafter, I.A.No.269 of 2016 was filed by the petitioner in O.S.No.33 of 2012 to club O.S.No.33 of 2012 with O.S.No.83 of 2010 to conduct common trial.

9. In the said application, it was alleged by the petitioner that the subject matter of both the suits is same, that the suits are interconnected and therefore they ought to be tried together.

10. This application was opposed by 1st respondent stating that both suits have different schedule of properties and even if they are tried separately, there will not be any conflict of judgments. They contended that the petitioner had obtained three sale deeds in respect

of Ac.0.40 cts without paying consideration thereunder and he has filed O.S.No.83 of 2010 for specific performance w.r.t. Ac.0.36 cts claimed by him and therefore, there is no necessity to hear both suits together.

11. By order dt.08-02-2017, the Court below dismissed I.A.No.269 of 2016 stating that the issues are different in both the suits, that nature of the suits is altogether different and reliefs are also different. Apart from that it also stated that 4th defendant in O.S.No.83 of 2010 is not a party in O.S.No.33 of 2012.

12. Assailing the same, this Revision Petition is filed.

13. Learned counsel for the petitioner contended that the Court below erred in not clubbing both the suits together since the claim of both the parties arise out of the same transaction particularly when an issue was framed in O.S.No.33 of 2012 as to “whether the said suit was a counter blast to O.S.No.83 of 2010?”

14. Learned counsel for the respondents refuted the said contention and supported the order passed by the Court below.

15. Superficially, though it appears that the reliefs claimed in both the suits are slightly different, it cannot be denied that the dispute in both the suits arose out of the same agreements of sale dt.19-04-2007 and 14-12-2007. While O.S.No.83 of 2010 is for specific performance of an extent of Ac.0.36 cts filed by the petitioner against the respondents, O.S.No.33 of 2012 is filed by the respondents

for recovery of the unpaid purchase money for the properties purchased under three sale deeds dt.14-09-2009, 16-09-2009 and 16-09-2009, respectively.

16. Merely because the 4th defendant in O.S.No.83 of 2010 is not party in O.S.No.33 of 2012 or merely because the reliefs prayed for are different, the respondents cannot oppose the joint trial of both the suits.

17. Having regard to the fact that the dispute of both the suits arose out of the same agreements and the principal actors are parties to both the suits, it is desirable to decide both the suits together in order to avoid conflicting judgments and repetition of evidence.

18. Therefore, the order dt.08-02-2017 in I.A.No.269 of 2016 in O.S.No.33 of 2012 of the III Additional District Judge, Bhimavaram is set aside. The said I.A. is allowed and the said Court is directed to conduct the joint trial of both the suits. No costs.

19. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 24-08-2017

kvr