

THE HON'BLE SRI JUSTICE M. S. K. JAISWAL
C.R.P.Nos. 4120 of 2016, 1038, 1039 & 1047 of 2017

COMMON ORDER:

These four civil revision petitions can be disposed of by this common order for the reason that they arise out of the orders in the interlocutory applications filed in and also in O.S.No. 230 of 1996, on the file of Principal Junior Civil Judge, Srikakulam.

2. Heard the learned counsel for the petitioners/plaintiffs and considered the material on record.

3. For brevity, the parties are referred to as they are arrayed in CRP No.4120 of 2016. The Revision Petitioners 1 to 6, who are Plaintiff Nos.22 to 26 and 31, along with Respondent Nos.11 to 59 herein, have filed suit - O.S.No.230 of 1996 before the Court below against the Respondents 1 to 10, who are Defendants 1 to 10 therein, seeking the relief of declaration in respect of B-Schedule property, admeasuring 92 cents, situated in R.S.No.21 of Balaga village of Srikakulam district. By the time the said suit came to be filed, another suit in O.S.No.104 of 1995 was filed by Respondents 1 to 10 herein in respect of the same property. When the trial Court was proceeding with the trial in both the above suits separately, CRP No.1205 of 2001 came to be filed before this Court, and this Court vide order dated 15.03.2005 directed that both the suits, namely, O.S.No.104 of 1995 and O.S.No.230 of 1996 should be tried jointly and consequently set aside the judgment

and decree in O.S.No.230 of 1996, which came to be passed prior thereto.

4. It appears that the trial was not being taken up jointly in spite of the orders of this Court to that effect. Be that as it may, in O.S.No.230 of 1996, Plaintiffs Nos.22 to 26 and 31, who are the revision petitioners herein, have filed I.A.Nos.1536, 1537 and 1538 of 2007 praying for a separate trial of the suit insofar as the revision petitioners are concerned, since they have conflict of interest with the remaining plaintiffs. But, the trial Court on 31.03.2011 dismissed I.A.Nos.1536 & 1537 of 2007 for default. Therefore, the revision petitioners preferred I.A.No.743 & 744 of 2012 to set aside the said orders, and the learned Junior Civil Judge, by his order dated 06.06.2016 dismissed the said petitions, apart from dismissing I.A.No.1538 of 2007 to conduct separate trial. Aggrieved by the same, the petitioners preferred CRP.Nos.1038, 1039 and 1047 of 2017. Four days thereafter, the main suit came to be taken up for trial, and the learned Junior Civil Judge has dismissed the main suit - O.S.No.230 of 1996 for default on 10.06.2016. Aggrieved by that, the petitioners have preferred CRP.No.4120 of 2016.

5. The main contention of the revision petitioners is that the dismissal of the main suit - O.S.No.230 of 1996 on 10.06.2016 for default, on the face of it, is erroneous and illegal for the reason that the said order clearly shows the presence of the learned Advocates, who are appearing for the parties in the Court below.

In the presence of the Advocates, appearing for the parties, the Court ought not to have dismissed the suit for default, which is resorted to only when there is no representation for the parties. Therefore, the order under challenge is erroneous, perverse, and warrants interference of this Court.

6. With regard to other three revision petitions, the learned counsel submits that a perusal of the impugned order shows that the Court has to take into consideration the fact that though the first petitioner died in October 2010, no steps whatsoever have been taken to implead his legal representatives, which shows the attitude of the revision petitioners, which in the opinion of the Court below, was intended only to protract or drag on the litigation, which is pending for more than two decades. The learned counsel submits that if at all no steps were taken to implead the legal representatives of the first petitioner, the Court ought to have passed adverse orders insofar as the 1st petitioner is concerned, but ought not to have deprived the other petitioners of their remedies, which they were invoking by filing the applications.

7. I have gone through the entire material on record, including the orders passed by the Court below. The agony of the trial Court is reflected in the orders passed by it for the reason that the conduct of the parties was such that the Court had no option except to pass adverse orders against them for the reason that even though the matters are pending from 1995 onwards, one party or the other was responsible for the non-disposal of the suits,

and in spite of there being a categorical direction of this Court as long back as on 15.03.2005 to dispose of the suit within six months, the trial Court was not able to do so obviously for the attitude of the parties to the litigation, who are numbering more than sixty. Be that as it may, what is seen from the orders is that the relief as sought for by the revision petitioners in three applications filed by them for conducting separate trial in so far as the revision petitioners are concerned vis-à-vis the other plaintiffs cannot be sustained for the reason that if their interest was in conflict with the interest of the other plaintiffs, they can be transposed as defendants, but they cannot ask the Court to conduct separate trial insofar as the revision petitioners are concerned. In other words, there cannot be triangular trial in a suit. If the request of the petitioners is to be accepted, it amounts to resolving the internal disputes in between the plaintiffs on one hand and the defendants on the other hand, which cannot be countenanced. At best, if the petitioners are so advised, they can be transposed as defendants and contest the suit by setting up their own plea, but they cannot say that there should be separate trial insofar as the present revision petitioners are concerned, as against the other co-plaintiffs. Therefore, I see no merit in CRP.Nos.1038, 1039 and 1047 of 2007, which are liable to be dismissed.

8. Accordingly, the CRP.Nos.1038, 1039 and 1047 of 2017 are dismissed, with an observation that it is always open to the revision petitioners, who are some of the plaintiffs in the suit to

avail such remedies that are available to them in accordance with law, if they got any grievance in the matter of conducting trial jointly, when they are arrayed as plaintiffs, whose interest are adverse to the other co-plaintiffs.

9. Insofar as the other revision i.e. CRP No.4120 of 2016 is concerned, I see substance in the contention of the learned counsel for the petitioners for the reason that the impugned order dated 10.06.2016 clearly reveals the fact that on the date when the suit was taken up for trial, the learned Advocates for the parties were present, but no appropriate steps were taken in the matter and therefore the Court below dismissed the suit for default, which procedure is erroneous. Therefore, the order of the Court below dated 10.06.2016 dismissing O.S.No.230 of 1996 is liable to be set aside.

10. Therefore, CRP No.4120 of 2016 is allowed and the impugned order dated 10.06.2016 dismissing the suit for default is set aside, and consequently O.S.No.230 of 1996 is restored to its original file with a direction to the learned Junior Civil Judge to dispose of the suit within six months from the date of receipt of a copy of the order. As already observed above, the revision petitioners are at liberty to take appropriate steps in the matter, if they are so advised in the matter of their internal disputes with the other plaintiffs in the original suit.

11. In the result, CRP No.4120 of 2016 is allowed, and CRP.Nos.1038, 1039 and 1047 of 2017 are dismissed accordingly.

Consequently, the pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

M.S.K.JAISWAL, J

Date: 02.06.2017
Kv



THE HON'BLE SRI JUSTICE M. S. K. JAISWAL



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