

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Civil Revision Petition No.2864 of 2017

ORDER:

The revision petitioner herein is the defendant in O.S. No.69 of 2013, filed by the respondent herein, on the file of VIII-Additional District Judge, Nizamabad, which suit was filed for declaration of title concerning an extent of 180 sq. yards within specific boundaries.

2. The revision petitioner also filed separate suit in O.S. No.338 of 2011 concerning an extent of 90 sq. yards against the respondent herein, her husband, and one Manzoor Ahmed and their tenant. The suit schedule property is situated in Yellammagutta cross-roads, Saraswathi Nagar, Nizamabad District.

3. When the respondent filed Transfer O.P. No.628 of 2016 on the file of Principal District Judge, Nizamabad, requesting to withdraw the suit in O.S. No.338 of 2011 from the file of Principal Junior Civil Judge, Nizamabad, and to transfer the same to the file of VIII-Additional District Judge, Nizamabad, for disposal with the suit in O.S. No.69 of 2013 pending on the same file, the learned District Judge, while exercising power under Section 24 of the Civil Procedure Code, allowed the O.P. withdrawing the suit in O.S. No.338 of 2011 from the file of Principal Junior Civil Judge, Nizamabad, and transferring the same to the file of VIII-Additional District Judge, Nizamabad, on the main ground that the suit in O.S. No.69 of 2013 is a comprehensive suit, whereas the suit in O.S.

No.338 of 2011 is a suit for perpetual injunction concerning portion of the property.

4. The revision petitioner on the main ground that both properties are totally different, their existence is different, reliefs sought are also different, and, contends that the District Judge was wrong in transferring the suit in O.S. No.338 of 2011 from the file of Principal Junior Civil Judge, Nizamabad to the file of VIII-Additional District Judge, Nizamabad, to be tried along with O.S. No.69 of 2013. That has been the main ground. The ancillary grounds are only to prolong and delay the matter, Transfer O.P. was filed, that too three years after the date of filing of the suit in O.S. No.69 of 2013 and the trial in O.S. No.338 of 2011 already commenced and got completed on 22.2.2017 and because of Transfer Application, from 16.11.2016, the suit was being adjourned without advancing arguments. The petitioner in Transfer O.P. intentionally dragging the suit without commencing the trial, in which counter is also filed by the respondent Mirza Arif Baig, who is the revision petitioner herein. As seen from paragraph-2, he mentions that the suit schedule property covered by the suit in O.S. No.69 of 2013 pending on the file of VIII-Additional District Judge, Nizamabad and the parties to the suit are different and as such the suit in O.S. No.338 of 2011 pending on the file of Principal Junior Civil Judge, Nizamabad cannot be transferred to the file of VIII-Additional District Judge, Nizamabad. The other grounds are that the trial in O.S. No.338 of 2011 was already commenced and

plaintiff's side evidence was also over and when the suit is at the stage of the defendant's evidence, the Transfer Petition was filed.

5. For better comprehension, it would be appropriate to refer to the cause title in both the suits.

The cause title in O.S. No.69 of 2013 reads thus:

"IN THE COURT OF THE HON'BLE DISTRICT JUDGE AT NIZAMABAD

O.S. No.69 of 2013

Between:

Smt. A. Nagamani W/o. Sri A. Baharath Bhushan, aged about 48 years, Occ: Housewife, R/o. H.No.2-11-134, Bobbili Veedhi, Nizamabad.

... Plaintiff

AND

1. Mirza Arif Baig, S/o. Mirza Ibrahim Baig, aged about 40 years, Occ: Nil, r/o.8-3-193, Yellammagutta, Nizamabad.

2. Mirza Younus Baig, S/o. Mirza Ibrahim Baig, aged about 45 years, Occ: Mechanic, R/o.8-3-193, Yellammagutta, Nizamabad.

3. The Tahsildar, Mandal Nizamabad, District Nizamabad. ... Defendants"

6. But, the revision petitioner has not provided the schedule to the plaint in O.S. No.69 of 2013 on the file of VIII-Additional District Judge, Nizamabad, for perusal and comparison with the property described in the plaint schedule in O.S. No.338 of 2011 on the file of Principal Junior Civil Judge, Nizamabad.

7. The cause title in O.S. No.338 of 2011 reads thus:

"IN THE COURT OF THE HON'BLE PRINCIPAL JUNIOR CIVL JUDGE AT NIZAMABAD

O.S. No.338 of 2011

Between:

Mirza Arif Baig, S/o. Mirza Ibrahim Baig, aged about 43 years, Occ: Car Door Mechanic, R/o.8-3-193, Yellammagutta, Nizamabad.

... Plaintiff

AND

1. Sri A. Bharat Bhushan, S/o. Narayana, aged about 48 years,
Occ: Business, R/o. H.No.2-11-134, Bobbili Veedhi, Nizamabad.

2. Smt. A. Nagamani W/o. Sri A. Bharath Bhushan, aged
about 38 years, Occ: Household, R/o. H.No.2-11-134,
Bobbili Veedhi, Nizamabad.

3. Manzoor Ahmed, S/o. Mahmood, aged about 45 years,
Occ: Business, R/o. H.No.9-14-94, Ahmedpura Colony,
Nizamabad.

...

Defendants”

8. The plaint schedule property in O.S. No.338 of 2011 is
described thus:

“SCHEDULE OF PROPERTY

All the open land with tin shed roofed rooms, shed etc., in an
extent of 90.00 square yards situated at Yellammaguta ‘X’ Road,
Saraswathi Nagar, Nizamabad (More specifically shown in the Yellow
colour of the suit rough sketch map) as bounded by:

North : Main Road and Dwakra Bazar,

East : Workshop of Mirza Yunus Baig,

West : Old LIC Building, Dr. Koulaiah’s Hospital

South : Neighbours houses and Saraswathi Nagar, Nizamabad.”

9. When the cause title of the Transfer O.P. No.628 of 2016
seen, it is shown thus:

“IN THE COURT OF HON’BLE DISTRICT JUDGE AT NIZAMABAD

Transfer O.P. No.628 of 2016

Between

Smt. A. Nagamani, W/o.A. Bharat Bhushan, aged about 50 years,
Occ: House wife R/o. H.No.2-11-134, Bobbili Veedhi,
Nizamabad.

...

Petitioner

And

Mirza Arif Baig, S/o. Mirza Ibrahim Baig, aged about 40 years,
Occ: Nil, r/o. 8-3-193, Yellammagutta, Nizamabad. ...

Respondent

In the matter of Original Suit No.338 of 2011 on the file of Junior Civil Judge at
Nizamabad.

Between:

Mirza Arif Baig, S/o. Mirza Ibrahim Baig, aged about 43 years,
Occ: Nil, r/o. 8-3-193, Yellammagutta, Nizamabad. ...

Plaintiff

And

1. Sri A. Bharat Bhushan, S/o. Narayana, aged 48 years,
Occ: Business, r/o. H.No.2-11-134, Bobbili Veedhi,
Nizamabad.

2. Smt. A. Nagamani W/o. Sri A. Bharath Bhushan, aged
about 48 years, Occ: Housewife, r/o. H.No.2-11-134,
Bobbili Veedhi, Nizamabad.

3. Manzoor Ahmed, S/o. Mahmood, aged about 45 years,
Occ: Business, r/o. H.No.9-14-94, Ahmedpura Colony,
Nizamabad.

...

Defendants”

10. Thus, it is clear that the cause title in O.S. No.69 of 2013 is shown in Transfer O.P. No.628 of 2016. The petitioner in Transfer O.P. shown the first defendant alone, but failed to show Manzoor Ahmed, who is the 2nd defendant, and The Tahsildar, Nizamabad, who is the 3rd defendant, in the cause title.

11. It is true that notices could not have been sent to the defendants 2 and 3 in O.S. No.69 of 2013 i.e., Mirza Younus Baig and The Tahsildar, Nizamabad as they were not shown in the cause title while describing the parties to the Transfer O.P. No.628 of 2016 and thus, they had no occasion to file counter and resist the request. This omission would certainly has bearing on the request made by the petitioner in Transfer O.P. No.628 of 2016 for the reason in the counter filed by the 1st respondent Mirza Arif Baig he pleaded that the plaint schedule properties in both the suits are identical.

12. Coming to the order passed by the learned District Judge, in the relief sought for in Transfer O.P. in paragraph-2 the description

of the parties and properties are mentioned. The averments made in the counter mentioned in paragraph-3. Paragraph No.4 relates to hearing both sides. Paragraph-5 relates to the point formulated for consideration. Paragraph-6 relates to the submissions made by the counsel for the petitioner. Paragraph-7 relates to the denial in the counter filed by the respondent. Paragraph-8 relates to the relief sought for in O.S. No.69 of 2013 and O.S. No.338 of 2011. The discussions in paragraphs-8 and 9 read thus:

“8. The petitioner herein has filed a suit vide OS 69 of 2013 before the VIII Additional District Judge, Nizamabad for declaration of title, recovery of possession and mandatory injunction and mesne profits and it is coming for trial. It is also a fact that the respondent herein has filed OS 338 of 2011 on the file of the Principal Junior Civil Judge, Nizamabad for perpetual injunction. The property involved in both the suits is one and the same, and in order to avoid conflicting judgments and multiplicity of proceedings and for convenience of the parties and also since the petitioner’s suit being comprehensive in nature, if the suit pending on the file of Principal Junior Civil Judge, Nizamabad is transferred to the Court of VIII Additional District Judge, Nizamabad it will be justified. Therefore, the petition is deserves to be allowed.

9. **IN THE RESULT**, the petition is allowed and the suit in O.S. No.338 of 2011 is transferred from the file of Principal Junior Civil Judge, Nizamabad to the file of VIII Additional District Judge, Nizamabad to be tried along with O.S. No.69 of 2013. No costs.”

13. When the defendants 2 and 3 in O.S. No.69 of 2013 are not shown as parties in Transfer O.P. No.628 of 2016, any order made in that regard would amount to violation of principles of natural justice, which is the very theme of the Code of Civil Procedure. In fact, when cause title is wrongly mentioned in the Transfer O.P., the

duty of the office of the District Judge is to get it rectified rather placing it before the learned District Judge, without raising an objection therefor. The learned District Judge also ought to have noted while hearing arguments, but, somehow, it was not noticed, perhaps the learned Counsel also did not draw the attention of the District Judge.

14. No doubt, the learned District Judge mentioned in paragraph-8 of the order that the property involved in both the suits is one and the same, but no details are forthcoming in arriving at the conclusion, more particularly, when the plaint schedule property in O.S. No.69 of 2013 is mentioned with relevant details by showing schedule of property annexing the same to the plaint, but the schedule of property in O.S. No.69 of 2013 is not placed for perusal of this Court by either party.

15. In such an event, the 3rd defendant – The Tahsildar, Nizamabad Mandal, would have brought it to the notice of the Court as to whether the schedule property in O.S. No.338 of 2011, which is an extent of 90.00 sq. yards constituted part and parcel of the schedule property in O.S. No.338 of 2011 had he been given a chance to file counter.

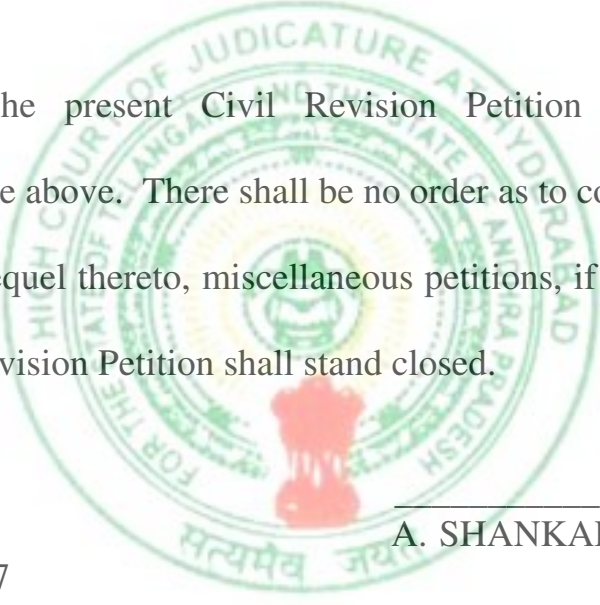
16. Therefore, it is desirable to set aside the order and remit the matter to the Principal District Judge, Nizamabad, with a direction to restore Transfer O.P.No.628 of 2016, require the petitioner in

Transfer O.P. No.628 of 2016 to amend the cause title so far as the suit in O.S. No.69 of 2013 and issue notice to the defendants 2 and 3 in O.S.No.69 of 2013 in Transfer O.P. as they would be taking the position of respondents 2 and 3 and to afford an opportunity of being heard to them in arriving at the conclusion whether the schedule property in both suits are identical or whether the schedule property in O.S. No.338 of 2011 constitutes part and parcel of the schedule property in O.S. No.69 of 2013 and pass appropriate orders in accordance with law.

17. The present Civil Revision Petition is allowed as indicated in the above. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in these Civil Revision Petition shall stand closed.

Dt. 23.10.2017
gbs

A. SHANKAR NARAYANA