

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.5405 of 2016

ORDER:

Having been aggrieved of the orders, dated 24.09.2016, of the learned Senior Civil Judge, Gadwal, passed in I.A.No.916 of 2013 in O.S.No.2 of 2013, the petitioner/1st defendant filed this Civil Revision Petition under Article 227 of the Constitution of India.

2. I have heard the submissions of Sri R.V.Nagabhushana Rao, the learned counsel for the revision petitioner/1st defendant ('1st defendant', for brevity) and of Sri P.Venkat Reddy, the learned counsel for respondents 1 and 2/plaintiff & 2nd defendant. I have perused the material record.

3. The facts, which are in a narrow compass, in brief, are as follows:

The first respondent herein/plaintiff brought a suit in O.S.No.2 of 2013 on the file of the Senior Civil Court, Gadwal, against the revision petitioner (1st defendant) and respondent No.2 herein (2nd defendant) for declaration of ownership and consequential perpetual injunction in respect of two items of property, viz., Acs.5.50 cents of agricultural land in survey number 116/3 and Acs.4.30 cents of agricultural land in survey number 116 of Kalukuntla village, more fully described in the schedule annexed to the plaint, that is, a total extent of Acs.9.80 cents of land. While so, one Kanyadhara Chitti Chowdary, who is not a party to the present revision and who is stated to be the son of the 2nd defendant in the aforementioned suit, brought the other suit in O.S.No.124 of 2012 on the file of the same Court against the parties to this revision as

defendants 1 to 3 for declaration of ownership and recovery of possession of the suit schedule property in the said suit, which is of an extent of Acs.9.27 guntas in survey number 116 of Kalukuntla village. The revision petitioner, who is a party defendant to both the suits, filed the subject application, I.A.No.916 of 2013 in O.S.No.2 of 2013, requesting to club both the suits, as the subject matter of both the suits is one and the same and the evidence to be adduced in both the suits would be common in view of the common issues that arise for determination in both the suits. That application was resisted by the plaintiff in the said suit/1st respondent herein. The trial Court, by the order impugned in this revision, dismissed the said application with a cryptic observation that the causes of action and the subject matters in both the suits are different. Aggrieved thereof, the 1st defendant/unsuccessful petitioner preferred this revision.

4. At the hearing, the learned counsel for the petitioner/1st defendant, while reiterating the chronology of events, which are stated *supra*, would further submit as under: “The subject matters in both the suits are one and the same; the same property is shown in one suit in two items and in the other suit in one consolidated item. The plaintiff in the suit O.S. No. 124 of 2012 is no other than the son of the 2nd defendant in the first mentioned instant suit O.S.No.2 of 2013. In view of the fact that the issues that arise for consideration in both the suits are more or less common, the evidence that is to be adduced would also be common. It is in the interest of justice to club both the suits; such a course would help the parties in saving their time and money and also the time of the Court.” He would point out that the order of the Court below, which is a

cryptic order and bereft of reasons, is unsustainable and that the trial Court ought to have clubbed both the suits having regard to the facts and circumstances.

5. *Per contra*, the learned counsel for the respondents 1 and 2 herein/plaintiff & 2nd defendant in O.S.No.2 of 2013 would submit that the plaintiff in the other suit is not a party to the present revision and also to the interlocutory application filed before the trial Court and that there is adverse interest between the plaintiffs insofar as the claims of the plaintiffs in the two suits and that clubbing of both the suits is impermissible under the facts and circumstances of the case.

6. However, both the learned counsel fairly submitted that the trial has not commenced in both the suits.

7. I have bestowed my attention to the facts and submissions.

8. Though *ex facie* the schedules of properties in both the suits appear to be one and the same, the fact of the matter is that there is adverse interest between the plaintiff in O.S.No.2 of 2013 and the plaintiff in the other suit O.S.No.124 of 2012, that is, the plaintiffs in both the suits. Therefore, the plaintiff in one suit has to necessarily cross-examine the plaintiff in the other suit and the said plaintiff's witnesses and vice versa. Similarly, the contesting defendants in both the suits have to cross-examine the plaintiff and the plaintiff's witnesses in both the suits and also the co-defendant/s and the co-defendant's witnesses in view of the different stands taken by the defendants in the respective suits. Therefore, clubbing of the suits, in the well considered view of this

Court, would lead to complexities rather than softening and expediting the trial processes in both the suits. Further, in view of the fair concession that there is adverse interest in the claims of the plaintiffs in both the suits, this Court is of the considered view that clubbing of the suits is not in the interest of justice. Viewed thus, this Court finds that there is no merit in the revision and that the revision is liable to be dismissed. Be it noted that though in the order of the trial Court there are no adequate reasons, this Court is of considered view that for that reason, the revision need not be allowed. Nonetheless, since the impugned order is sustainable, it can be sustained by supplying adequate reasons as is now done by way of this order.

9. In the result, the Civil Revision Petition is dismissed. However, keeping in view the peculiar facts and circumstances of the case, the trial Court is directed to conduct simultaneous and separate trials in both the suits and dispose of both the suits on one day by pronouncing judgments separately in both the suits on the same day to meet the ends of justice. It is also made clear that the trial Court shall ensure that the witnesses, who are common witnesses in both the suits be examined on the same day in both the suits for obviating the necessity of the said witnesses coming to the Court over and again.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this civil revision petition shall stand closed.

M.Seetharama Murthi, J

27th January, 2017
Bvv