

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.3935 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the petitioner/defendant in O.S.No.1054 of 2016, is directed against the order, dated 28.06.2017, of the learned XX Junior Civil Judge, City Civil Court, Hyderabad, passed in I.A.No.404 of 2017 in the afore-stated suit.

2. I have heard the submissions of Sri Aadesh Varma, learned counsel for the petitioner/defendant. I have perused the material record. For convenience and clarity, the parties shall hereinafter be referred to in the manner they are arraigned in O.S.No.1054 of 2016.

3. The facts of the case, which lie in a narrow compass, in brief, are as follows:-

The plaintiff brought the afore-stated suit against the defendant for eviction, after issuing the statutory notice under the provisions of the Transfer of Property Act, 1882. The defendant filed the other suit in O.S.No.1545 of 2015 for perpetual injunction. Both the suits relate to the same property and are on the file of the same Court is not in dispute. The plaintiff earlier filed a memo requesting the trial Court to club both the suits and conduct joint trial. The defendant filed a memo of objections stating, in detail, his various objections for clubbing of the suits. However, later, the plaintiff filed I.A.No.404 of 2017 under Section 151 of the Code of Civil Procedure, 1908, requesting to club both the suits and conduct joint trial to avoid adduction of the same evidence twice in both the suits and to save

time and money of the parties and the time of the Court as well. In the said petition, since the defendant did not file any counter, his right to file the counter was forfeited, as is evident from the order impugned. The trial Court, in the order impugned, opined that the joint trial is warranted in the facts and circumstances of the case, as such a course would obviate the necessity of recording the same evidence twice in both the suits and that clubbing of both the suits would meet the ends of justice.

4. Aggrieved thereof, the petitioner/defendant is before this Court.

5. The learned counsel for the petitioner/defendant would submit as follows:-

‘Earlier the plaintiff filed a memo for clubbing of the suits for joint trial and the said memo was opposed by the defendant by filing his objections, in detail. Without disposing of the said memo filed by the defendant, the trial Court considered the subsequent application filed by the plaintiff under Section 151 of the Code for the same relief. Recording of evidence in O.S.No.1545 of 2015 filed by the defendant has already commenced. Therefore, the trial Court ought not to have considered the request of the plaintiff and ought not to have clubbed both the suits for joint trial. Though it is mentioned in the impugned order of the Court below that no counter is filed and the right to file the counter is forfeited, in fact, counter has been filed in the said interlocutory application.’

6. I have bestowed my attention to the facts and submissions. Having regard to the facts and submissions, this Court is of the considered view that this Revision can be disposed of at the stage of admission.

7. As already noted, the plaintiff filed the suit for eviction, whereas, the defendant filed the suit for perpetual injunction and that both suits are in respect of the same property and that both the suits are pending on the file of the trial Court. The subject matter as well as the issues that fall for consideration in both the suits are more or less identical. Certainly, the findings recorded in one suit will have a bearing on the issues that fall for consideration in the other suit. In view of the common contentions of the parties in the suits, the evidence that may be adduced by the parties during the trial of the suits would also be common. Therefore, consolidation of both the suits for joint trial, in the well considered view of this Court, would sub-serve the ends of justice. Since earlier a memo was only filed seeking consolidation of the suits, the plaintiff later filed an interlocutory application. Hence, the Court below, instead of considering the memo earlier filed, took up the interlocutory application for consideration and disposal, as consideration of the said application rather than a memo is more appropriate as per procedure. This Court on careful examination finds that the objections raised by the defendant are untenable. As rightly observed by the Court below, clubbing of the suits would obviate the necessity of recording the same evidence twice, separately, in both the suits and would save the time and money of the parties as well as the valuable time of the trial Court. The said course also helps in avoiding conflicting findings and judgments in the two suits.

8. Viewed thus, this Court finds that there is no error or impropriety or illegality in the order of the trial Court calling for

interference and that the contentions raised by the defendant, which are extracted supra, are untenable and do not merit consideration.

9. In the result, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

09th August, 2017
Bvv

M.Seetharama Murthi, J

