

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.1455 OF 2015

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order passed by the Senior Civil Judge, Peddapuram in I.A.No.76 of 2015 in O.S.No.84 of 2013 dated 02.03.2015, whereby the Trial Court allowed the application for consolidation/clubbing of O.S.No.136 of 2006 with O.S.No.84 of 2013 and directed the parties in both the suits to adduce any further evidence in O.S.No.136 of 2006.

O.S.No.136 of 2006 and O.S.No.84 of 2013 are filed one against the other for distinct reliefs. O.S.No.136 of 2006 is filed for declaration of title, recovery of possession, whereas, O.S.No.84 of 2013 is filed for specific performance of the oral agreement of sale. These two reliefs are distinct and if O.S.No.136 of 2006 is decreed, declaring that the respondents herein are the owners, then the enforceability of oral agreement and granting relief in a suit for specific performance has to be considered. If, for any reason, O.S.No.136 of 2006 is dismissed, the consequences are different. When the Trial in O.S.No.136 of 2006 was completed and when the matter was coming up for arguments, I.A.No.76 of 205 in O.S.No.84 of 2013 is filed to club both the suits.

Curiously, the same respondent in this revision petition filed I.A.No.452 of 2014 in O.S.No.136 of 2006 requesting the Court to dispose of both the suits simultaneously and the same was allowed vide order dated 26.08.2014. The respondent herein again filed I.A.No.76 of 205 in O.S.No.84 of 2013 to club both the suits and vide order dated 03.03.2015 the Trial Court allowed the petition, which is the subject matter of this revision petition.

The respondents admitted about filing of two suits for different reliefs in the same property i.e. for claiming rights in the same property in the year 2006 and 2013 itself. Despite it, she sought for disposal of both the suits simultaneously. But now, she changed her plea and sought for clubbing both the suits to read the evidence in O.S.No.136 of 2006 as evidence in O.S.No.84 of 2013. Both the reliefs claimed in the petition are inconsistent.

Undisputedly, the Trial in O.S.No.136 of 2006 was completed and both the parties adduced their evidence and the matter was coming up for arguments. At this stage, question of reading the evidence in O.S.No.136 of 2006 as evidence in O.S.No.84 of 2013, which was filed almost seven years from the date of earlier suit would not arise. If such prayer is accepted, all the witnesses in O.S.No.136 of 2006 have to be recalled and examined further with regard to pleas raised in O.S.No.84 of 2013. This would lead to further complications and delay in disposal of O.S.No.136 of 2006.

The Trial Court having accepted the petitioner's relief in I.A.No.452 of 2014 ought not to have ordered I.A.No.76 of 2015 in O.S.No.84 of 2013, having accepted to dispose of for both the suits, simultaneously, only at the request of the respondents. Therefore, the order passed by the Trial Court in I.A.No.76 of 2015 in O.S.No.84 of 2013 is erroneous in view of the complications that would arise in case of recalling all the witnesses in O.S.No.136 of 2006 and examining them with regard to pleas raised in O.S.No.84 of 2013. Therefore, I find that the order passed by the Trial Court is erroneous, though it is discretionary in nature, such discretion has to be exercised in accordance with law.

When the Subordinate Court committed an error in exercise of discretion, this Court can exercise power under Article 227 of the Constitution of India, particularly, when the Trial Court exceeded its power vested on it or passed an order based on extraneous material or evidence. In such case, this Court can exercise power under Article 227 of Constitution of India either on the application of any one of the parties or this Court can also exercise suomotu power, since the power of this Court is supervisory in nature and to keep the Subordinate Court and Tribunals within its limits and work within the powers that are conferred on them. Therefore, even in the absence of any application, or petition under Article 227 of Constitution of India,

this Court can exercise such supervisory power and set-aside the order.

Therefore, I find that the order passed by the Trial Court in I.A.No.76 of 2015 in O.S.No.84 of 2013 is erroneous, as it would lead to further complications and delay in disposal of O.S.No.136 of 2006 and I.A.No.76 of 2015 in O.S.No.84 of 2013 is hereby set-aside.

In the result, civil revision petition is allowed.

However, the Trial Court is directed to decide O.S.No.136 of 2006 and O.S.No.84 of 2013 simultaneously, as ordered earlier in I.A.No.452 of 2014 in O.S.No.136 of 2006, as expeditiously as possible and in any event not later than six months from the date of receipt of this order.

Consequently, miscellaneous petitions, if any, pending in this petition, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:26.04.2017

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