

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.5377 of 2017

ORDER :

The petitioners are the plaintiffs 1 to 5 and the respondent is the sole defendant in O.S.No.1 of 2009 on the file of the II Additional District Judge at Suryapet of Nalgonda District. This is a suit for specific performance of written contract for sale, dated 27.05.2008, for Rs.90,80,000/- in respect of the plaint house property, which is Northern side of house bearing No.1-4-249/149/1, Northern side of house No.1-4-249/149/3, and house No.1-4-249/149/2, covering an area of 272 Sq.Yads, situated at K.K.Road Suryapet Town and municipality, within the boundaries described in the plaint schedule. The said suit is under contest and riped for disposal from the evidence already on record and written arguments of the plaintiffs also filed on 20.11.2015 or later to it. There is another suit in O.S.No.26 of 2012 on the file of the self same Court for the relief of declaration of title and recovery of possession and cancelation of registered sale deed executed in favour of the plaintiffs herein, filed on 06.12.2012 by the defendant herein as plaintiff therein. It is also under contest. There is another suit in O.S.No.24 of 2010 filed by the daughter of the defendant of O.S.No.1 of 2009 to cancel the sale agreement, which is subject matter of O.S.No.1 of 2009 and same is also pending and the plaintiffs herein as defendants in O.S.No.24 of 2010 is also contesting.

2. It is while so, the defendant filed a petition to stay of further proceedings in O.S.No.1 of 2009 till the other suits in O.S.No.24 of

2010 and O.S.No.26 of 2012 filed by the defendant and her daughter respectively as plaintiffs therein, ripe for disposal. The plaintiffs herein of O.S.No.1 of 2009 opposed the petition by their counter. However, the application was allowed by the trial Court stalling the disposal of suit in O.S.No.1 of 2009, it is impugned order of the trial Court, dated 12.07.2017, is the subject matter of the present revision. The order of the learned trial Judge covered by the impugned order shows the defendant of O.S.No.1 of 2009, who is petitioner in I.A.No.991 of 2015, gifted house bearing No.1-4-249/149/2 in favour of her daughter Akula Karuna, so also house bearing No.1-4-249/149/3 to her another daughter Kasam Kavitha. There is an agreement of sale, dated 27.05.2008, pursuant to which sale deed No.6522 of 2008 said to have been obtained by plaintiff No.1 and his wife from the present suit in O.S.No.1 of 2009 in respect of southern portion of the property bearing house number supra and the specific performance suit is for northern portion of the respective house properties and it is contesting the defendant of the agreement, dated 27.05.2008, was not executed by her in favour of the plaintiffs and she filed O.S.No.26 of 2012 to declare the said sale deed bearing No.6522 of 2008 also as null and void and for recovery of possession and one of her daughters by name Kasam Karuna @ Thota Karuna filed O.S.No.24 of 2010 on the file of the Senior Civil Judge, Suryapet, attacking the sale agreement, dated 27.05.2008, (subject matter of the present suit in O.S.No.1 of 2009) and the said suit was transferred to

the II Addl. District Judge, Suraypet, and renumbered as O.S.No.13 of 2012 and her contest in that suit is that her mother, the defendant in O.S.No.1 of 2009, is not competent to sell away the property that was already gifted to her and thereby, among the three suits, two suits are in relation to the self same agreement of specific performance and the other agreement is not binding since already the vendor of the agreement registered gift deed to her daughter and the other suit is to cancel the registered sale deed and all the three suits are interconnected to be tried together, much less for pronouncement of judgment at a time.

3. The plaintiffs by filing counter opposed the petition on various grounds of the evidence is independent, trial is separate and there are no grounds to stall the proceedings of O.S.No.1 of 2009, which is ripe for disposal and written arguments filed way back in 2015.

4. The point for consideration there from by the trial Court as to the prayer for stay of O.S.No.1 of 2009 can be granted till other suits ripe for disposal?

5. It is observed that the High Court in **Kanuru Basava Punnarao v. Puttagunta Nageswara Rao**¹, for three suits filed by different plaintiffs against the same defendant pending in different courts, which are similar in nature with the common defence to avoid conflicting judgments and three suits to be proceeded simultaneously,

¹ 1999 (6) ALD 707

to pronounce judgment at a time, thereby the principle laid down in that expression also applies to the facts on hand.

6. It is the impugment attacking the said observation that by reiterating the facts with the contentions raised in the court opposing the petition and that the judgment has no application, the trial Court did not properly appreciate the facts and there is no basis to keep pending the suit in O.S.No.1 of 2009 ripe for judgment way back in 2015 and written arguments filed in 2015, without disposal for more than two years, and in allowing the application to stay the same till other suits ripe for disposal, thereby the impugned order is liable to be set aside.

7. Learned counsel for the petitioners/plaintiffs reiterated the said contentions raised in the revision grounds with reference to the facts referred supra impugning the order. Whereas, the counsel for the respondent/defendant of O.S.No.1 of 2009 supported the order of the lower Court referring to the facts and supporting the expression placed reliance also.

8. Heard both sides at length.

9. Now it is to say for no need to repeat the facts covered by impugned order in detail, that so far as application of the precedents concerned, there are no precedents matching facts and each case depends upon own facts and even a little change in the factual aspect will tilt the result, so also the application of the earlier expression as it is to consider the principle of law laid down on its binding nature to

the case dealing on hand and not matching the colour of the earlier to the present one on facts. Keeping this fact in mind, though in the expression of this Court referred supra, it was from three suits filed by three plaintiffs against a common defendant with similar nature pending in different Courts ordered to be transferred to single Court to try simultaneously, to pronounce judgment at a time, and no trial was commenced in any of the suits.

10. Now coming to the facts with reference to the case and principle laid down, the suit in O.S.No.1 of 2009 for specific performance of the contract for sale is ripe for judgment with written arguments of the plaintiff filed way back in 2015 as referred supra. There is nothing to stall by stay of the suit without disposal there from and it is at that stage after filing of the written arguments of plaintiff, the sole defendant filed the application covered by impugned order of the lower Court in I.A.No.991 of 2015 seeking to stay the suit in O.S.No.1 of 2009 till further two suits supra of O.S.No.26 of 2012 and O.S.No.24 of 2010 renumbered as O.S.No.13 of 2012 ripe for arguments for common disposal. This is not the spirit of the law, much less from that expression of this Court referred by the trial Court. In fact, so far as the suit O.S.No.26 of 2012 concerned, it is the defendant herein filed to set aside the registered sale deed for the southern portion of the house property and which is nothing to do with the present subject matter of the suit covered by the suit sale agreement for the northern portion of the house property from the

facts referred supra. Thereby, there is nothing to wait for disposal of the suit O.S.No.1 of 2009 riping for judgment till disposal of O.S.No.26 of 2012 and the trial Court missed to take note of this important fact. Even coming to the suit O.S.No.24 of 2010 transferred from Senior Civil Judge, Suryapet, to the II Additional District Court, Suryapet, and renumbered as O.S.No.13 of 2012 filed by the daughter-Kasam Karuna of the defendant herein questioning the very sale agreement, which is subject matter of the specific performance suit of O.S.No.1 of 2009, she can as well sought for impleadment as a party of the suit in O.S.No.1 of 2009 and did not choose to do so even knowledge by simply filed another suit O.S.No.13 of 2012 (O.S.No.24 of 2010) and sought transfer and even after 2012 not made efforts for get disposal. Apart from it, even ultimately if that suit O.S.No.13 of 2012 (O.S.No.24 of 2010) is decreed in favour of the plaintiff, who is the daughter of the defendant in O.S.No.1 of 2009, the consequences will follow even the suit for specific performance in O.S.No.1 of 2009 decreed. Thereby, there is nothing to stall the disposal of O.S.No.1 of 2009, but for at best, if at all decreed, in the event of decree for specific performance, that the granting of decree and execution of sale deed is subject to result of O.S.No.13 of 2012 pending from the so-called claim of gift deed executed by the defendant in favour of her daughter earlier if any to the so-called sale agreement sought for specific performance.

11. Having regard to the above and in the result, the order of the trial Court is set aside and revision petition is allowed with the observations supra for the trial Court to proceed with the matters independently.

Miscellaneous petitions pending, if any, shall stand dismissed.

No costs.

Dr. B. SIVA SANKARA RAO, J

3rd November 2017.

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