

HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.40133 of 2017

ORDER.

This Writ Petition is filed for the following relief:

“.... to issue a Writ, order or direction more particularly one in the nature of Writ of Prohibition to restrain the suit filed by the respondent/plaintiff, vide OS No. 42 of 2017 on the file of the Senior Civil Judge Court, Nagarkurnool, Mahaboobnagar District, which is violation of Section-10 of CPC and consequently, to dismiss the suit filed by the respondent, vide OS No. 42 of 2017 on the file of the Senior Civil Judge Court, Nagarkurnool, Mahaboobnagar District.”

At the time of scrutiny, the Registry took the following objection:

“Please clarify how this W.P. is entertainable filed by the petitioner against sole respondent/plaintiff in O.S.No.42 of 2017 on the file of Senior Civil Judge Court, Nagarkurnool.”

Learned counsel for the petitioner re-presented the returned material papers with the following submissions:

“The second respondent is party in O.S.No.12 of 2012. So, she cannot file second suit. Hence, in this WP for prohibition is maintainable.”

Since the Registry is not satisfied with the submissions of the learned counsel for the petitioner, the matter is listed under the caption “For Orders of the Court”.

Learned counsel for the petitioner would submit that between the parties and others in respect of the same subject matter, there are two suits, one for partition and the other for perpetual injunction, and therefore, the present Writ Petition is filed seeking stay of the subsequent suit.

At the hearing, learned counsel for the petitioner fairly concedes that there is an efficacious alternative remedy under Section-10 of the Code of Civil Procedure, 1908. He, therefore, seeks permission to withdraw the Writ Petition with liberty to file an appropriate application in the pending suit before the trial Court.

Recording these submissions and upholding the objection of the Registry, this Writ Petition is disposed of as not maintainable, reserving liberty to the petitioner as sought for. No costs.

As a sequel, the Miscellaneous Petitions, if any, pending shall stand dismissed.

JUSTICE M.SEETHARAMA MURTI

20th November 2017

DR