

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NOS.195 AND 196 OF 2018

COMMON ORDER

O.S.No.195 of 2012 on the file of the learned IV Additional District Judge, Ranga Reddy District at L.B.Nagar (old O.S.No.1586 of 2007 on the file of the learned I Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar), was filed by Manoj Kumar Jain and his mother, Sunita Jain, seeking eviction of S.S.Pillai from the suit schedule property comprising House No.4-104 (old Nos.2-65/2 & 2-67), admeasuring 260.12 square yards, Fateh Nagar, Kukatpally Municipality, Ranga Reddy District; arrears of rent from February to June, 2007 @ Rs.12,000/- per month, aggregating to Rs.72,000/-; mesne profits @ Rs.24,000/- per month from May, 2007; and for costs. C.Rajeshwari, the wife of S.S.Pillai, the defendant, was impleaded in the suit as the second defendant.

C.Rajeshwari filed O.S.No.562 of 2010 on the file of the learned IV Additional District Judge, Ranga Reddy District at L.B.Nagar, seeking declaration of her title over the very same property, being House No.4-104 at Fateh Nagar, Kukatpally Municipality, Ranga Reddy District, on the strength of an anomalous mortgage, allegedly camouflaged as a sale in the registered sale deed dated 22.04.2004. She sought a preliminary decree for redemption of the mortgage *qua* the said property and also a final decree directing the second and third defendants to re-convey the property to her by executing a re-conveyance deed. The first defendant in the suit was K.L.Jain, while the second and third defendants were his son and wife, Manoj Kumar Jain and Sunita Jain. The fourth defendant in the suit was the plaintiff's husband, S.S.Pillai.

While so, K.L.Jain, Manoj Kumar Jain and Sunita Jain, the defendants in O.S.No.562 of 2010 filed by C.Rajeshwari, sought stay of all further proceedings therein by filing an application in I.A.No.967 of 2017 in O.S.No.562 of 2010 under Section 10 CPC. Their claim was that as their suit in O.S.No.195 of 2012 (old O.S.No.1586 of 2007) was also pending on the file of the learned IV Additional District Judge, Ranga Reddy District at L.B.Nagar, the proceedings in O.S.No.562 of 2010 should be stayed pending disposal of their suit. By order dated 05.01.2018, the trial Court dismissed the I.A. Aggrieved thereby, K.L.Jain, Manoj Kumar Jain and Sunita Jain filed C.R.P.No.195 of 2018 before this Court under Article 227 of the Constitution.

Earlier, I.A.No.1363 of 2011 was filed in O.S.No.195 of 2012 (old O.S.No.1586 of 2007) by Manoj Kumar Jain and Sunita Jain, the plaintiffs therein, under Order XV-A CPC seeking a direction to the respondents therein, the defendants in the suit, to deposit Rs.6,36,000/- towards arrears of rent with a further direction to them to deposit future rents and to strike off their defence in the event of failure. By a separate order dated 05.01.2018, the trial Court dismissed this I.A also. Aggrieved thereby, Manoj Kumar Jain and Sunita Jain preferred C.R.P.No.196 of 2018 before this Court under Article 227 of the Constitution.

Heard the learned counsel for the parties.

Perusal of the order dated 05.01.2018 in I.A.No.1363 of 2011 in O.S.No.195 of 2012 (old O.S.No.1586 of 2007) reflects that though Manoj Kumar Jain and Sunita Jain claimed that Order XV-A CPC was applicable on the strength of a registered lease deed, the trial Court found that there was a dispute as to the jural relationship of

lessor and lessee between the parties due to the transaction under the registered document dated 22.04.2004 which was styled as a sale deed. Owing to the same, the trial Court opined that the provisions of Order XV-A CPC could not be invoked. Further, the trial Court took note of the fact that C.Rajeshwari had already deposited a sum of Rs.20,00,000/- to the credit of her own suit in O.S.No.562 of 2010, which could be utilized by the Court for satisfying any decree in relation to rental arrears in O.S.No.195 of 2012 (old O.S.No.1586 of 2007), if the plaintiffs therein succeeded. An undertaking to this effect had been filed by C.Rajeshwari and taking note of the same, the trial Court concluded that the petitioners in the I.A., the plaintiffs in O.S.No.195 of 2012 (old O.S.No.1586 of 2007), were not entitled to the benefit of Order XV-A CPC and dismissed the I.A., subject to the undertaking given by C.Rajeshwari, which was duly accepted.

As regards I.A.No.967 of 2017 filed by K.L.Jain, Manoj Kumar Jain and Sunita Jain under Section 10 CPC in O.S.No.562 of 2010, the separate order dated 05.01.2018 passed therein demonstrates that the trial Court took note of the fact that O.S.No.562 of 2010 was filed for declaration of title and redemption of an anomalous mortgage, while O.S.No.195 of 2012 (old O.S.No.1586 of 2007) was filed for eviction with attendant benefits and observed that the issues involved in both the suits were not one and the same but some would overlap. As the scope and nature of the two suits were not identical and the reliefs sought were different, the trial Court concluded that no reason was made out to stay the subsequent suit. The trial Court further opined that if both the suits were tried and disposed of simultaneously, no prejudice would be caused to the parties and there would be no conflict of decisions. The I.A. was accordingly

dismissed holding that no grounds were made out to stay further proceedings in the subsequent suit.

As rightly pointed out by the trial Court, application of the provisions of Order XV-A CPC would not arise when there is a dispute as to the jural relationship of lessor and lessee. Unless the rival claim put up by the so-called lessee is examined, it would not be possible for the trial Court to determine as to whether there is any liability to pay rent at all. Further, as the trial Court accepted the undertaking given by C.Rajeshwari to the effect that the amount deposited by her in the other suit, O.S.No.562 of 2010, which was more than sufficient to cover the arrears claim, could be utilized to satisfy any decree passed against her in the eviction suit, the interest of Manoj Kumar Jain and Sunita Jain, the plaintiffs in the said eviction suit, stood adequately protected. This Court therefore finds no irregularity or error having been committed by the trial Court in dismissing I.A.No.1363 of 2011 in O.S.No.195 of 2012 (old O.S.No.1586 of 2007). C.R.P.No.196 of 2018 arising out of this order is therefore liable to be dismissed.

As regards the order dated 05.01.2018 passed in I.A.No.967 of 2017 in O.S.No.562 of 2010, this Court finds that as both the suits are pending on the file of the same learned Judge, it would be enough if they are clubbed for joint trial and adjudication. Thereby, overlapping issues could be tried and considered together so that there would be no possibility of conflicting decisions on such issues.

As the trial in one of the two suits has commenced, this Court deems it proper to direct clubbing of the suits for joint trial and adjudication without further ado, so that valuable time is not lost in pursuing another application for this purpose. Be it noted that both

the suits are pre-2012 cases and require to be given high priority in disposal, as per the circular instructions of this Court on the administrative side.

The learned IV Additional District Judge, Ranga Reddy District at L.B.Nagar, is therefore directed to club O.S.No.562 of 2010 with O.S.No.195 of 2012 (old O.S.No.1586 of 2007) for joint trial and adjudication.

To sum up, C.R.P.No.196 of 2018 is dismissed and C.R.P.No.195 of 2018 is disposed of with directions, as stated *supra*. Pending miscellaneous petitions, if any, in both cases shall stand closed. No order as to costs.

MARCH, 2018

Svv

SANJAY KUMAR, J

