

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION NO.596 OF 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India, assailing the order, dated 30.11.2016 passed in I.A.No.70 of 2016 in O.S.No.88 of 2010 on the file of the Junior Civil Judge, Thorrur.

2. Heard the learned counsel for both parties.

3. The petitioner filed the interlocutory application seeking to stay all further proceedings in O.S.No.88 of 2010. The respondents filed counter *inter alia* contending that the petition is not maintainable either on facts or in law. The trial Court, after affording reasonable opportunity to both parties, dismissed the application. Hence, this revision.

4. A perusal of the record reveals that the 1st respondent filed O.S.No.88 of 2010 on the file of the Junior Civil Judge, Thorrur, against the respondents 2 to 4 and the petitioner-defendants Nos.1 to 4 respectively, for specific performance of agreement of sale, dated 14.02.1983. The petitioner filed O.S.No.7 of 2003 on the file of the Senior Civil Judge, Mahabubabad, against the respondents 2 to 4, Shamakuri Ailaiah, Vennu Lalitha, Edapaka Uppalaiah and Mahankali Venkata Sailu, seeking perpetual injunction in respect of the suit schedule property. During the pendency of O.S.No.88 of 2010, the petitioner filed the above interlocutory application under Section 10 CPC seeking to stay all further proceedings in O.S.No.88 of 2010 till disposal of O.S.No.7 of 2003.

5. Learned counsel for the petitioner strenuously submitted that the trial Court has not considered the scope

of Section 10 CPC and dismissed the application. It is further submitted that the issue involved in both the suits is substantially one and the same and the parties to the proceedings are one and the same. **Per contra**, learned counsel for the respondents submitted that Section 10 of CPC would not be applicable to the facts of the case since it is a fit case to dismiss the petition.

6. The point that arises for consideration is: Whether there is any illegality, irregularity or impropriety in the impugned order?

7. O.S.No.88 of 2010 was filed for specific performance of agreement of sale in respect of an extent of Ac.0.10 gts. of land in Survey No.229 of Thorur village and Mandal, Warangal District. The extent of land in O.S.No.7 of 2003 is Ac.1.23 gts. in Survey No.229/4 corresponding to old Survey No.229. The total extent of land in both the suits is not one and the same. The parties to both the proceedings are not one and the same. The relief sought for in both the suits is not one and the same. In a suit for perpetual injunction, the Court has to decide whether the plaintiff has been in possession and enjoyment of the suit schedule property, much less, as on the date of filing of the suit. In a suit for specific performance, the plaintiff has to establish that he is entitled for the relief of specific performance. The relief sought in a suit for specific performance is a discretionary relief. The Court cannot decide the title of the parties in a suit for injunction. In a suit for specific performance, the Court has to decide the validity or otherwise of agreement of sale in question. Section 10 CPC can be pressed into service if the issue involved in both the suits is substantially one and the same.

The issue involved in O.S.No.7 of 2003 and O.S.No.88 of 2010 is not one and the same. As observed earlier, the parties to the proceedings are not one and the same. The relief sought for in both the suits is not one and the same. The plea taken by the petitioner will fall outside the purview of Section 10 CPC. The trial Court considered the scope of Section 10 CPC in right perspective and arrived at a conclusion that the application is liable to be dismissed.

8. A perusal of the record reveals that petitioner filed Transfer O.P.No.804 of 2010 on the file of the Principal District Judge, Warangal, seeking to transfer the suit. The learned District Judge, dismissed the petition on 06.09.2013. This clearly indicates that the petitioner on one pretext or the other intending to drag on the proceedings. I am fully endorsing with the findings recorded by the trial Court. There is no illegality, irregularity or impropriety in the order passed by the trial Court, which warrants interference of this Court.

9. Accordingly, the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous petitions, if any pending, in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

DATED: 20-09-2018.

Hsd