

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.6080 OF 2010

ORDER:

Heard Sri K. Lakhmana Chary, learned counsel, for Sri A. M. Srinivasa Rangachary, learned counsel for the petitioner.

2. No representation for the respondents.

3. The order under challenge is one of rejection of request by the learned VIII-Junior Civil Judge, City Civil Court, Hyderabad, in I.A. No.862 of 2010 in O.S. No.1993 of 2007.

4. The revision petitioner herein, being the sole plaintiff, made an application in I.A. No.862 of 2010 under Order 23 Rule 1 Sub-rule (3) read with Section 151 of Civil Procedure Code, 1908 (for short, 'C.P.C.') requesting to grant leave to withdraw the suit with liberty to institute fresh suit in respect of the subject-matter of the said suit.

5. Learned VIII-Junior Civil Judge, City Civil Court, Hyderabad, referring to the factum of possession of suit premises in paragraph-2 and observing that the plaintiff has got every right to withdraw the suit at any stage of the case and in this case the defendant denied the possession of the property by the plaintiff, and, therefore, the plaintiff has no right to ask the Court to file fresh suit in respect of the subject-matter of the suit and there is remedy available to the plaintiff to file fresh suit whenever cause of action arises and

thereby permitted the plaintiff to withdraw the suit, and, accordingly, dismissed the suit with costs as withdrawn.

6. Learned counsel would submit that the order is legally infirm. According to the learned counsel, when once latter request reserving the right to institute fresh suit was rejected, the Court below ought not to have dismissed the suit, but ought to have continued the suit proceedings, which the Court below did not follow.

7. Perused the order. What is stated by the learned counsel for the revision petitioner is true. The Court below just observing that the remedy is available to the plaintiff to file fresh suit whenever cause of action arises, dismissed the suit. In fact, there was no occasion to go into factum of possession where the suit is at the threshold.

8. Learned counsel would submit that liberty was sought, for the reason after written statement was submitted it necessitated to file suit for declaration of title.

9. Be that as it may, when the affidavit of the revision petitioner/plaintiff is seen in paragraph-7, she comes out clearly that in case permission was not granted she was ready and willing to proceed with the suit and cross-examine D.W.1. Thus, it indicates that the plaintiff's side evidence was already completed and the suit was coming up for cross-examination of D.W.1.

10. Keeping in view, the said averment made by the petitioner, the order under challenge requires to be set aside restoring the suit to its original number and directing to proceed with the cross-

examination of D.W.1 by the petitioner herein as requested in paragraph-7.

11. Accordingly, the present Civil Revision Petition is allowed with the aforesaid direction. The revision petitioner shall get ready and cooperate with the Court for cross-examination of D.W.1 and so also the defendants shall get ready and cooperate with the Court. The learned VIII-Junior Civil Judge, City Civil Court, Hyderabad, is also directed to dispose of the suit within three (3) months from the date of receipt of a copy of the order. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions if any pending in the Civil Revision Petition shall stand closed.

Dt. 19.06.2018
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A.SHANKAR NARAYANA,J

