

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.4018 of 2018

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed by the unsuccessful petitioners - plaintiffs assailing the order, dated 27.06.2018, of the learned VII Additional District Judge, Ongole, passed in IA.No.571 of 2018 in OS.No.40 of 2012.

2. I have heard the submissions of Sri Venkateswarlu Chakkilam, learned counsel appearing for the revision petitioners, and of Sri A.Sreenivasa Rao, learned counsel appearing for the respondents 3 & 4. Though respondents 1 & 2 are not yet served with the notices, having regard to the nature of the subject matter, this Court is of the considered view that the revision can be disposed of even without notice to the said respondents.

3. I have perused the material record.

4. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows: "The respondents 3 & 4 herein filed OS.No.204 of 1996 on the file of the Additional Senior Civil Court, Ongole, against respondents 1, 2 & 6/the Official Receiver, Ongole. The said suit was decreed. An Execution Petition in EP.No.153 of 2012 was filed on the file of VII Additional District Court, Ongole, for execution of the decree in the afore-stated suit. In the said EP, the petitioners herein filed EA.No.778 of 2012 under Order XXI, Rule 97 read with Rule 101 and Section 151 of the Code requesting to declare that the EP schedule property is the ancestral property of the petitioners and that in the said property the respondents 1 & 2 herein have no alienable right and to

declare that the petitioners are in absolute possession of the EP schedule property and that their said possession cannot be disturbed by respondents 3 & 4 herein pursuant to the decree in OS.No.204 of 1996 afore-stated. While so, the claim petitioners, who are the petitioners herein, also filed OS.No.40 of 2012 on the file of District Court, Ongole, against the respondents herein for a declaration that the petitioners herein - plaintiffs therein are absolute owners of the plaint schedule property which is their ancestral property; for a consequential perpetual injunction; and, for declaration that the decree dated 30.01.2003, in OS.No.204 of 1996 on the file of Additional Senior Civil Court, Ongole, is a collusive decree and that the same was obtained by playing fraud and mischief. Subsequently, the petitioners herein filed Transfer OP.No.7 of 2013 on the file of District Court, Prakasam at Ongole, requesting to transfer the execution proceedings in EP.No.153 of 2012 on the file of Principal Senior Civil Court, Ongole, to the file of II Additional District Court, Ongole, where the afore-stated suit OS.No.40 of 2012 is pending, for disposal after recording common evidence. The respondents 3 & 4 in the TrOP, that is, respondents 1 & 6 herein, reported no objection for the said course. However, respondents 3, 4 & 5 herein, having filed a counter resisted the application for transfer filed by the petitioners herein. By order, dated 26.11.2013, the learned District Judge, having allowed the TrOP, has withdrawn the EP.No.153 of 2012 along with EA.No.778 of 2012 in EP.No.153 of 2012 in OS.No.204 of 1996 from the file of Principal Senior Civil Court, Ongole, and transferred the same to the file of the II Additional District Court, Ongole. The operative portion of the said order in the TrOP reads verbatim as under:

“In the result, the petition is allowed and the E.P.No.153/2012 along with EA.No.778/2012 in

OS.No.204/1996 pending on the file of Principal Senior Civil Judge, Ongole is withdrawn and the same is transferred to the file of II Additional District Judge, Ongole to be tried along with O.S.No.40/2012 pending therein by recording common evidence.”

While so, the petitioners herein filed the subject Interlocutory Application requesting the learned II Additional District Judge [trial Court] to club both the matters and record common evidence. However, by the impugned order, the said application was dismissed. Therefore, the petitioners are before this Court.

5. The contention of the petitioners is that in view of the orders of the learned District Judge passed in the TrOP directing the learned II Additional District Judge, Ongole, to try both the matters together after recording common evidence, it is not competent for the learned II Additional District Judge to take an independent decision for recording evidence independently and separately in both the proceedings in deviation of the orders of the learned District Judge passed in the TrOP.

6. Learned counsel for the respondents 3 & 4 supported the impugned orders.

7. I have gone through the impugned order. The learned II Additional District Judge, in his said orders, expressed an opinion that an executing Court cannot go behind the decree and that in the EA.no.778 of 2012 filed in the EP, the petitioners herein are required to establish their claim and, therefore, it is not desirable to club the matters and record common evidence and hence, there is no necessity to club the claim petition and the suit. It is trite to note that in the claim petition in EA.No.778 of 2012, in the EP, the claim

petitioners are required to establish their title/claim in order to succeed in the claim petition. The claim petition has to be tried as a suit, as per the legal position obtaining. Be that as it may. As rightly observed by the learned Judge of the trial Court, in the order impugned, the executing Court cannot go behind the decree; the executing Court cannot adjudicate the issue as to whether the decree being sought to be executed is one obtained by collusion, fraud and mischief; and it cannot examine the validity of the decree; and the said issues fall for determination in the civil suit wherein the cancellation of the decree was sought. However, learned counsel for the petitioners herein submits that in view of the orders passed by the learned District Judge in the TrOP, the learned II Additional District Judge shall try the EP as well as the suit pending on the file of his Court after recording common evidence. As already noted, learned counsel for the respondents 3 & 4 would submit that it is impermissible to club both the matters as the scope of adjudication in the two matters is different and as the issues that fall for consideration & determination in the two proceedings are also different. He would further submit that the evidence that is required to be adduced in the suit may not be relevant and may be superfluous and even irrelevant in the execution proceedings/claim application in EA.No.778 of 2012.

8. I have given earnest consideration to the facts and submissions. On giving detailed and thoughtful consideration, this Court is in agreement with the view of the trial Court/Court below that it is not appropriate to consolidate a claim petition and suit and record common evidence. In the claim petition, the Court executing the Decree has to adjudicate the point related to title and the said issue of title to the property which is subject matter is to be decided

without the necessity of examining the validity of the decree as the executing Court has to proceed on the basis that the decree is valid and is enforceable. However, in the suit where the validity of the decree is challenged and its cancellation was sought while seeking the reliefs of declaration of title and perpetual injunction, the trial Court has to determine the issues settled on the original side.

9. On the above analysis, this Court finds that while confirming the order of the trial Court/executing Court, the revision petition filed invoking the Article 227 of the Constitution of India can be disposed of with appropriate directions.

10. Accordingly, the Civil Revision Petition is disposed of confirming the impugned order, subject, however, to the following observations:

“The Court below shall conduct enquiry in the Execution Application and trial in the suit simultaneously without consolidating both the said matters. The evidence be first recorded in the suit, which is a comprehensive matter, and the original documents be exhibited in the suit. Simultaneously evidence be recorded in the Execution Application; nonetheless, the corresponding photocopies of the documents be permitted to be marked in the Execution Application. The witnesses who are common be examined on the same day in both the matters, but their evidence be recorded separately in both the proceedings. After recording evidence in one matter, the learned Judge shall withhold the judgment in that one matter till the recording of evidence is completed in the other matter. Thereafter, he shall simultaneously dispose of both the cases on the same day by two separate judgments taking care that the

judgment in one matter/proceeding is not based on the evidence recorded in the other matter.”

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

10.08.2018

Vjl

