

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.6315 OF 2018

ORDER:

The Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner - proposed defendant No.2, challenging the order, dated 26.09.2018, in I.A. No.254 of 2018 in O.S. No.363 of 2018, passed by the learned VI Junior Civil Judge, City Civil Court, Hyderabad.

2. The petitioner herein, as a third party, filed petition - I.A. No.254 of 2018 under Order I, Rule 10 read with Section 151 of the Code of Civil Procedure, 1908, to implead him as a party to the suit on the ground that he being a neighbour, whose rights are affected on account of unauthorized construction made by respondent Nos.1 and 2 deviating the approved plan sanctioned by respondent No.3 - GHMC, filed the suit O.S. No.681 of 2017, which is pending on the file of learned IV Junior Civil Judge, City Civil Court, Hyderabad, against respondent Nos.1 and 2 for declaration and mandatory injunction; and that on receipt of summons in the said suit, respondent Nos.1 and 2 filed O.S.No.363 of 2018 pending on the file of VI Junior Civil Judge, City Civil Court, Hyderabad for grant of perpetual injunction restraining respondent No.3 - GHMC from interfering with construction being carried on by them. But, the trial Court dismissed the petition on the ground that suit - O.S. No.681 of 2017 filed by the petitioner is pending before IV Junior Civil Judge and he can redress his claim in the said suit without impleading in the present suit.

3. Aggrieved by the order, the present revision is filed by the petitioner under Article 227 of the Constitution of India as the trial Court did not exercise its jurisdiction properly that vested on it, and that in case respondent Nos.1 and 2 herein obtain any injunction against respondent No.3 - GHMC, it will have its serious consequences on the rights of the petitioner herein, but the trial Court did not take into consideration of the same and committed an error in dismissing the petition.

4. Learned counsel for the petitioner, Sri Sharad Sanghi, reiterated the contentions urged in the petition filed before the trial Court and in the revision.

5. Undisputedly, two suits are pending before two different Courts viz., O.S. No.681 of 2017 filed by the petitioner herein seeking declaration and mandatory injunction against respondent Nos.1 and 2 herein is pending before the learned IV Junior Civil Judge, City Civil Court, Hyderabad, and O.S. No.363 of 2018 filed by respondent Nos.1 and 2 against respondent No.3 for perpetual injunction is pending before the VI Junior Civil Judge, City Civil Court Hyderabad. Instead of allowing the petition to permit the petitioner herein to come on record as defendant No.2, the trial Court dismissed the same on the sole ground that the suit O.S. No.681 of 2017 filed by him is pending before the IV Junior Civil Judge and he can redress his claim before it. No doubt, the petitioner is entitled to redress his claim in O.S. No.681 of 2017, but if for any reason, decree is passed in favour of respondent

Nos.1 and 2 herein in O.S. No.363 of 2018, it will have its own impact on the pending suit filed by the petitioner. Therefore, dismissal of the petition by order under challenge on the ground that the petitioner can redress his claim in the pending suit filed by him is an illegality.

6. The only grievance before this Court is that in the event of deciding both suits by two different Courts, there is possibility of conflicting of judgments and judgment in one case will have its own bearing on the other suit pending before the other Court. In such case, this Court can exercise power under Article 227 of the Constitution of India to withdraw one of the suits pending on the file of one of the Courts and transfer the same to the Court where other suit is pending, to avoid unnecessary complications and conflicting judgments, with a direction to decide both the suits in accordance with law. Since power of this Court under Article 227 of the Constitution of India though limited, this Court can exercise revisional jurisdiction under Article 227 of the Constitution of India in limited circumstances and nature of the jurisdiction is supervisory over the subordinate Courts or the Tribunals under the control of High Court. The power of revision under Article 227 of the Constitution of India is limited to find out whether the order under challenge, passed by the subordinate Court or Tribunal within their jurisdictional limits and the main intention of exercising both administrative and judicial control under Article 227 of Constitution of India is to keep them within the bounds of their

jurisdiction and not to allow them to transgress from their jurisdictional limits, but not otherwise. The Court can exercise jurisdiction under Article 227 of the Constitution of India under the following circumstances:

- a. When the inferior court assumes jurisdiction erroneously in excess of power;
- b. When refused to exercise jurisdiction;
- c. When found an error of law apparent on the face of record;
- d. Violated principles of natural justice;
- e. Arbitrary or capricious exercise of authority or discretion;
- f. Arriving at a finding which is perverse or based on no material;
- g. A patent or flagrant error in procedure;
- h. Order resulting in manifest injustice;
- i. Error both on facts and law or even otherwise.

Similarly, this Court cannot exercise its discretion under Article 227 of the Constitution of India in the following circumstances:

- a. Where the only question involved is one of interpretation of deed;
- b. On question of admission or rejection of particular piece of evidence, even though the question may be of everyday recurrence;
- c. To correct erroneous exercise of jurisdiction, as a Court of revision;
- d. To set aside an *intra vires* finding of the fact, except where it is founded on no material or is perverse;
- e. To correct an error of law, not being an error apparent on the face of the record;
- f. To interfere with the *intra vires* exercise of discretionary power, unless it is violative of principles of natural justice;
- g. The Court shall not interfere on a merely technical ground which would not advance substantial justice.

7. Thus, Article 227 of Constitution of India conferred unbridled power over Subordinate Courts under the control of High

Court to see that they shall not cross their limits, and the Hon'ble Supreme Court in **State (N.C.T. Of Delhi) v. Navjot Sandhu @ Afsan Guru**¹ held that under Article 227 of Constitution of India High Courts can interfere with the orders of Subordinate Courts. In view of the law laid down by Apex Court, the High Courts have power over the Subordinate Courts to control them not only on administrative side, but also on judicial side. Therefore, the Court can exercise power under Article 227 of the Constitution of India and pass appropriate order to avoid unnecessary complications in disposal of the petitions. By exercising such power *suo motu*, instead of allowing the present revision, I find that it is appropriate to withdraw O.S. No.363 of 2018 from the file of VI Junior Civil Judge, City Civil Court, Hyderabad and transferred the same to the Court of IV Junior Civil Judge, City Civil Court, Hyderabad, with a direction to learned IV Junior Civil Judge to dispose of both the suits in accordance with law, but this Court cannot issue a direction to club both the suits in view of the judgment rendered by a Division Bench of this Court in **Dronavajjula Vidyamba v. Vallabhajosyula Lakshmi Venkayamma**², leaving it open to the trial Court either to club or to decide separately.

8. With the above direction, the Civil Revision Petition is disposed of. No order as to costs.

¹. 2005 (3) ALT (CrI.) 125 (SC)

² AIR 1958 (A.P.) Page 218

Consequently, Miscellaneous Petitions, if any, pending in the present revision, stand closed.

M. SATYANARAYANA MURTHY, J

October 30, 2018
Mgr

