

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.6282 of 2018

ORDER:

This petition under Article 227 of the Constitution of India is filed challenging the docket order dated 04.10.2018 whereby the petition filed under Section 10 of Code of Civil Procedure was rejected.

2. It is the case of the petitioners that the respondent/plaintiff filed suit O.S.No.52 of 2015 on the file of Family Court, Anantapuram, (for short, 'the trial Court') for relief of declaration of title and recovery of possession. While the matter stood thus, he filed W.P.No.25477 of 2013 and along with the writ petition he filed an application i.e., W.P.M.P.No.31441 of 2013 for grant of injunction, and this Court was pleased to grant interim order as requested by the petitioner in the writ petition.

3. As the dispute is pending before this Court in W.P.No.25477 of 2013, the petitioners sought stay of further proceedings in O.S.No.52 of 2015 pending before the trial Court and the petition was dismissed by assigning reason under the impugned order. Aggrieved by the order, the present revision is filed under Article 227 of the Constitution of India, reiterating the same ground.

4. It is undisputed fact that the respondent filed suit for declaration of title and this petitioner filed W.P.No.25477 of 2013 and also W.P.M.P.No.31441 of 2013 for injunctive relief which was granted by this Court.

5. According to Section 10 of CPC, *"No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between*

parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court." The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res-judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject matter in both the suits is identical. The key words in Section 10 are "the matter in issue is directly and substantially in issue" in the previous instituted suit. The words "directly and substantially in issue" are used in contra-distinction to the words "incidentally or collaterally in issue". Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of subject matter in both the proceedings is identical. The object underlying Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two Courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the civil Court and it cannot apply to proceedings of other nature instituted under any other statute.

6. Thus, it is clear from the language used in Section 10 that only subsequently instituted suits have to be stayed, but in the present case, no suit was instituted subsequently to the suit O.S.No.52 of 2015, except filing a writ petition i.e., W.P.No.25477 of 2013 and obtaining interim orders vide W.P.M.P.No.31441 of 2013.

7. On strict construction of Section 10, it is clear that it is applicable only to subsequent suits and not to any other proceedings instituted under any other law. Therefore, W.P.No.25477 of 2013 filed before this Court cannot be equated with a suit. A writ petition, in ordinary course of events, can be disposed off basing on undisputed facts, and facts which are in dispute cannot be decided in a writ petition. Such questions have to be decided in a civil suit on trial. Hence, pendency of writ petition is not a bar to try the suit. Therefore, it is left open to the petitioners to pursue their remedies in appropriate proceedings.

8. With the above observation, the civil revision petition is dismissed, affirming the docket order dated 04.10.2018 passed by the trial Court. No costs. Pending miscellaneous petitions, if any, shall also stand dismissed.

14th December, 2018

KSM

M. SATYANARAYANA MURTHY, J



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