

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION No.160 of 2014

ORDER:

This civil revision petition is filed questioning the order, dated 26.11.2013, passed in I.A.No.418/2013 in O.S.No.167/2002, on the file of the Principal Junior Civil Judge, Kothagudem, Khammam District, whereby, the application under Section 10 CPC seeking to stay of the suit proceedings along with IAs was dismissed.

The matter is posted today for hearing finally. Learned counsel for the petitioners is present. He argues the matter at length and states that the lower court committed an error in not staying the suit as prayed for. Learned counsel points out that there is identity of parties, identity of cause of action and therefore, he expresses his opinion that the suit is liable to be stayed, particularly, under the provisions of Section 10 CPC.

On behalf of the respondent, it is submitted that the order passed by the lower court is perfectly correct and valid. He points out that the schedules, extents, survey numbers and the parties are different in two suits, viz., O.S.No.167/2013 and O.S.No.31/2013. Hence, he states that no ground is made to stay the suit.

This court, after hearing both the learned counsel and perusing the copies of plaints which are filed as material papers, is of the opinion that the extent, survey number and the boundaries of the properties in both the suits do not match. Apart from that, the parties are also different. Paragraph Nos.9 to 11 of the impugned order is also clear and categorical. The court has noticed the differences. Therefore, the court came to the conclusion that the final decision in the first suit will not operate as *res*

judicate in the subsequent suit. This court finds no infirmity warranting inference with the impugned order. The test adopted by the lower court namely whether the decision in the first suit will operate as *res judicata* in the subsequent suit is the correct test. The differences in the complaints are also highlighted by the lower court. This court finds no merits in the revision petition.

The Civil Revision Petition is accordingly dismissed. In the circumstances, no costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Date: 22.11.2018
Dsr

D.V.S.S.SOMAYAJULU,J

