

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.5986 of 2017

ORDER:

1 Challenge in this Civil Revision Petition, filed under Article 227 of the Constitution of India, is to the order dated 26.10.2017 passed in Tr.OP No.2017 of 2017 on the file of the Court of the Chief Judge, City Civil Court, Hyderabad.

2 Heard the learned counsel for both parties.

3 The facts leading to filing of the present Civil Revision Petition are as follows:

4 The petitioner filed Tr.OP NO.2017 of 2017 on the file of the Chief Judge, City Civil Court, Hyderabad seeking to withdraw O.S.No.1079 of 2014 on the file of the 26th Additional Chief Judge, City Civil Court, Hyderabad and transfer the same to the III Additional Chief Judge, City Civil Court, Hyderabad to try along with O.S.No.780 of 2017. The respondents filed counter *inter alia* contending that the cause of action in both the suits is not one and the same; therefore, the petition is liable to be dismissed. The trial court, after affording reasonable opportunity to both parties, dismissed the petition. Hence the present Civil Revision Petition.

5 The point for consideration is whether there is any illegality, irregularity or impropriety in the impugned order warranting interference of this Court?

6 A perusal of the record reveals that the respondent Nos.1 to 3 filed O.S.No.1079 of 2014 against the petitioner on the file of the 26th Additional Chief Judge, City Civil Court, Hyderabad for recovery of the suit schedule property i.e. Flat No.401, III Floor, Sarada Residency,

Erramanzil, Hyderabad. The petitioner filed O.S.No.780 of 2017 against the respondents for specific performance of an oral agreement of sale dated 16.09.2005. Both counsel submitted that the petitioner worked in the first respondent company at Delhi for some time and resigned from the job. As per the averments made in O.S.No.1079 of 2014, the respondents permitted the petitioner to occupy the premises in question being an employee of the first respondent company. It is the further case of the respondents that the petitioner, after submitting his resignation, did not handover the suit schedule property; therefore, the respondents filed O.S.No.1079 of 2014 for recovery of possession. It is the case of the petitioner that he purchased the suit schedule property under an oral agreement of sale dated 16.09.2005.

7 O.S.No.1079 of 2014 is a suit for recovery of possession. O.S.No.780 of 2017 is a suit for specific performance of an oral agreement of sale. The nature of the evidence to be adduced in both the suits is not one and the same. The relief sought for in both the suits is also not one and the same. In order to succeed the suit, the petitioner has to establish that the respondents have entered into an oral agreement of sale with the petitioner on 16.09.2005. Admittedly, the petitioner is in possession of the suit schedule property as on the date of filing of the suit. The petitioner received the summons in O.S.No.1079 of 2014 way back in the year 2014. The petitioner did not choose to file suit for specific performance for a period of three years after receiving summons in O.S.No.1079 of 2014. After filing of the chief examination affidavit of P.W.1 in O.S.No.1079 of 2014, the petitioner filed O.S.No.780 of 2017. As observed earlier, the nature of the evidence to be adduced in both the suits is not one and the same. It is also not in dispute that the relief sought for in both the suits is not one and the same. Even if respective courts are allowed to dispose of

the suits independently, it would not lead to multiplicity of litigation or conflicting of judgments. It is a settled principle of law that if a common question of fact or law is involved in both the suits, the court has to club both the suits and dispose of the same. In the instant case the question of fact involved in both the suits is not one and the same.

8 The learned Chief Judge, City Civil Court, Hyderabad considered the material available on record in right perspective and dismissed the O.P. This court shall not lightly interfere with the discretionary power exercised by the trial court unless there is an error apparent on the face of the record. In the instant case, there is no error apparent on the face of the impugned order. The trial Court has assigned reasons much less cogent and valid reasons to its findings. There is no illegality, irregularity or impropriety in the impugned order, warranting interference of this court while exercising jurisdiction under Article 227 of the Constitution of India. The Civil Revision Petition lacks merits and bona fides.

9 In the result, the Civil Revision Petition is dismissed. No order as to costs. As a sequel, miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand dismissed.

T. SUNIL CHOWDARY, J.

Date: 24.09.2017
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