

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 21ST DAY OF OCTOBER 2019

THE HON'BLE MR. JUSTICE K.KALYANASUNDARAM

A.No.6355 of 2019
in
C.S.NO.856 OF 2014

MRS.RAMA PRIYA DILIP
W/O.DILIP, FLAT NO.8,
INDIRA APARTMENTS,
3RD FLOOR, NO.25 RAMANATHAN STREET,
KILPAUK, CHENNAI- 600 010. ..PLAINTIFF

-VS-

MRS.RAM MANOHARI
W/O.DR.G.RAJARAM, FLAT NO.3A,
IIIIRD FLOOR, GEE GEE CRESCENT,
DOOR NO.114, POONAMALLEE HIGH ROAD,
CHENNAI-600 084. ..DEFENDANT

A.NO.6355 OF 2019:

MRS.RAM MANOHARI
W/O.RAJARAM, FLAT NO.3A,
GEE GEE CRESCENT, 3RD FLOOR,
DOOR NO.114, POONAMALLEE HIGH ROAD,
CHENNAI-600 084. ..APPLICANT/PLAINTIFF

-VS-

MRS.RAM PRIYA DILIP
W/O.DILIP, FLAT NO.8,
INDIRA APARTMENTS,
3RD FLOOR, NO.25 RAMANATHAN STREET,
KILPAUK, CHENNAI-600 010. ..RESPONDENT/DEFENDANT

Application praying that this Hon'ble Court be pleased to stay all further proceedings in C.S.No.856 of 2014 pending disposal of T.O.S.No.66 of 2016.

This application coming on this day before this court for hearing the court made the following order:

<https://hcservices.ecourts.gov.in/hcservices/>

This application has been filed to stay all further proceedings in C.S.No.856 of 2014, pending disposal of

T.O.S.No.66 of 2016.

2. The respondent instituted C.S.No.856 of 2014 for partition and separate possession. O.P.No.400 of 2016 was filed by the applicant for grant of letters of administration of the registered Will dated 21.02.1991 and on contest, the O.P. was converted into T.O.S.No.66 of 2016.

3. This application has been filed on the sole ground that the properties in both the suit and Letters of Administration proceeding are one and the same.

4. The learned counsel for the applicant, by relying upon the decision of Orissa High Court reported in the case of **Ashok Kumar Ray v. Reba Biswas** [AIR 2017 Ori 48], submitted that the suit proceedings have to be stayed, till the disposal of the probate proceedings.

5. The learned counsel for the respondent, by referring the counter, would argue that this Court already ordered for joint trial for suit and TOS Proceeding on 27.06.2019 and hence, this application, seeking for stay of the above suit is not maintainable. It is further submitted that the issues involved in both the proceedings, witnesses to be examined and documents to be marked are one and the same and both the suits are completely depending upon genuineness of the Will and once it is decided, the partition suit will come to an end. This application has been filed with an ulterior motive so as to drag on the suit proceedings.

6. The learned counsel for the respondent, placing reliance on the decisions of the Hon'ble Apex Court in the case of **Balbir Singh Wasu v. Lakhbir Singh** [(2005) 12 SCC 503] and **Nirmala Devi v. Arun Kumar Gupta** [(2005) 12 SCC 505] would contend that both the proceedings can be clubbed together and disposed of by a common Judgment.

7. The Hon'ble Apex Court in **(2005) 12 SCC 503**, has held as follows:-
<https://hcservices.ecourts.gov.in/hcservices/>

"6. However, having regard to the fact that in this case a large number of issues would overlap, we are of the view that both the probate proceedings and the civil suit should be clubbed and heard together by the District Judge who would be competent to hear and dispose of both the civil suit as well as the probate proceedings. We are supported in the view that we have taken by the order passed by a Bench of three Hon'ble Judges of this Court in *Nirmala Devi v. Arun Kumar Gupta* [(2000) 2 All I HLR 436 : (2005) 12 SCC 505]. Accordingly, the appeals are disposed of by transferring the appellant's civil suit to the District Judge, Chandigarh. Similarly Probate Proceedings No. 2 of 1999 filed by the respondents pending before the High Court is transferred to the District Judge, Chandigarh for the purpose of being disposed of together with the civil suit. The interim order, if any, already passed in either of the proceedings will continue unless vacated/modified or altered by the District Judge. No costs."

8. In **(2005) 12 SCC 505**, it has been observed by the Hon'ble Apex Court that the decision in the probate proceedings on the question of proof of Will, will have a direct impact on the suit and hence, on this sole ground, the suit was transferred to Probate Court and directed to be disposed of along with it.

9. In the case on hand, it is not disputed that by an order dated 27.06.2019, a joint trial was ordered by this Court.

In the light of the decisions of the Hon'ble Apex Court, I am unable to follow the decision of Orissa High

Court in the case of **Ashok Kumar Ray** (*supra*), and the application lacks merit and liable to be dismissed and accordingly, it is dismissed.

11. Post the matter before the learned Additional Master-III for recording further evidence.

Sd/-M.K.K.S.J.

21.10.2019

//Certified to be a true copy//
Dated this the day of 2019.

SU/25.10.2019

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



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