

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No. 878 of 2019

ORDER:

This Revision is filed under Article 227 of the Constitution of India, challenging the order dt.15.03.2019 in IA.No.121 of 2019 in OS.No.244 of 2010 of the X Additional Chief Judge, City Civil Court at Hyderabad.

2. Petitioner is the 2nd defendant in the suit.
3. Respondents 1 and 2 filed the said suit against the petitioner and other respondents for declaration of title, recovery of possession and consequential injunction in respect of the plaint schedule property on 28.04.2010.
4. Written statement was filed by the petitioner/2nd defendant on 02.07.2010 contending that the suit itself is not maintainable and is barred by the principles of *res judicata*. A further plea is also raised that the suit is barred by limitation.
5. Other defendants also filed written statement opposing the suit claim.
6. The Court below framed 9 issues of which issue No.2 was “Whether the suit claim is hit by principles of *res judicata*.”
7. Thereafter the trial commenced.

8. On 22.01.2019, petitioner herein who is 2nd defendant in the suit filed IA.No.121 of 2019 to decide issue No.2 as a preliminary issue. He contended that the very principle of *res judicata* prevents trying a suit or issue, which was directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim, litigating under the same title; that decision dt.21.09.1978 in CCCA.No.122 of 1973, of this Court and the decision in LGC.No.164 of 1998 which was confirmed in WP.No.7061 of 2005 on the issue of title to the property, have attained finality and the respondents 1 and 2 cannot be allowed to re-agitate the issues.

9. Counter was filed by the respondents 1 and 2 opposing the said contentions. It was denied that the principles of *res judicata* would apply. It was also contended that the property, which is subject matter of the present suit, is not the property, which is subject matter of OS.No.27 of 1963 out of which the CCCA No.122/1973 arose. Reliance is also placed on the decision of this Court in WP.No.17494 of 2005.

10. By order dated 15.03.2019, the Court below rejected the said application. It is observed that the suit is of the year 2010, that the trial has commenced and the documents on which the petitioner seeks to rely would be useful for consideration of the issue No.2 in the main case, but not at this stage. It also relied on the Judgment of this Court in ***Munakkayala Konda Reddy and others v. Tulla Venkat reddy and***

*another*¹ and concluded that it could decide the said issue No.2 framed along with other issues.

11. Assailing the same revision is filed.

12. Counsel for petitioner sought to contend that the Court below was not right in refusing to decide the issue No.2 as a preliminary issue, and pointed out that the property which is subject matter of the instant suit, is covered by the Judgment rendered in OS.No.27 of 1963 and LGC No.164 of 1998.

13. Having regard to the fact that the suit is of the year 2010 and trial has already commenced, it would be appropriate to consider the plea of application of principle of *res judicata* in the main case but not at this stage, because the suit would conclude within a short time and the Court below would be able to decide all the issues at one go.

14. Therefore, I do not find any error of jurisdiction in the order passed by the Court below warranting interference of this Court under Article 226 of the Constitution of India.

15. Accordingly, the Revision is dismissed. No order as to costs.

Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S. RAMACHANDRA RAO, J

18th April, 2019
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¹ 2002 (1) ALT 343