THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.899 OF 2019

ORDER:

This revision, under Article 227 of the Constitution of India, is filed by the petitioner/plaintiff aggrieved by the order dated 22.03.2019 passed in I.A.No.1952 of 2017 in O.S.No.673 of 2016 by the II Additional Chief Judge, City Civil Court, Hyderabad, wherein the Court below was pleased to stay the proceedings in O.S.No.673 of 2016 till the disposal of the former suit in O.S.No.833 of 2012 pending on the file of III Additional Chief Judge, City Civil Court, Hyderabad.

2. Heard learned counsel for the revision petitioner and perused the record.

3. The material placed on record reveals that O.S.No.833 of 2012 was filed by the first respondent herein against the revision petitioner for declaration and delivery of first floor bearing door No.1-1-256/8/1, 2 and 3, Road No.3, Chikkadpally, Hyderabad and the suit in O.S.No.673 of 2016 was filed by the revision petitioner against the 1st respondent herein and another for recovery of possession and mesne profits of second floor bearing door No.1-1-256/8/1, 2 and 3, Road No.3, Chikkadpally, Hyderabad.

4. It is apt and appropriate to extract Section 10 of the Code of Civil Procedure, 1908, which reads as follows:-

> "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."

5. It is evident from the pleadings and the claims made in both the suits that the suit in O.S.No.833 of 2012 was filed for declaration and delivery of first floor and the suit in O.S.No.673 of 2016 was filed for recovery of possession and mesne profits in respect of second floor. Though the parties and door numbers of both the properties are one and the same, the reliefs sought as well as the properties covered by both the suits are distinct. The issues that fall for consideration in both the suits are not substantially the same, so also, the properties covered by both the suits. In the given circumstances, the Court below ought not have stayed the operation of the suit in O.S.No.673 of 2016 on the file of the II Additional Chief Judge, City Civil Court, Hyderabad. Therefore, the impugned order is liable to be set aside.

6. Accordingly, the impugned order dated 22.03.2019 passed in I.A.No.1952 of 2017 in O.S.No.673 of 2016 by the II Additional Chief Judge, City Civil Court, Hyderabad, is set aside. Consequently, I.A.No.1952 of 2017 in O.S.No.673 of 2016 stands dismissed.

7. This Civil Revision Petition, is accordingly, allowed. No costs.

The Miscellaneous Petitions, if any, pending shall stand closed.

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Dr. SHAMEEM AKTHER, J

Date: 27.11.2019
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