

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

CIVIL REVISION PETITION NO.1563 OF 2019

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt. 20.03.2019 in E.A.No.110 of 2017 in E.A.No.51 of 2017 in E.A.No.83 of 2015 in E.P.No.150 of 2013 in O.S.No.139 of 2012 on the file of the Principal Senior Civil Judge at Mahabubnagar.

Petitioner had filed O.S.No.139 of 2012 against the second respondent for specific performance of an agreement of sale and the said suit had been decreed on 15.03.2013 by the Principal Senior Civil Judge at Mahabubnagar. Thereafter, E.P.No.150 of 2013 was filed for execution of the said decree seeking a direction to execute the registered sale deed in favour of the petitioner.

On 11.02.2015, pursuant to the orders in the said E.P., sale deed was executed and registered in favour of the petitioner by the Court below.

The first respondent herein filed O.S.No.19 of 2015 against the petitioner and the second respondent challenging the decree dt. 15.03.2013 in O.S.No.139 of 2012 before the Senior Civil Judge, Mahabubnagar.

The first respondent also filed E.A.No.51 of 2017 under Order XXI Rule 97 of the Code of Civil Procedure, 1908 (CPC) in E.P.No.150 of 2013 to revoke warrant of delivery of suit property

issued on 06.04.2017 in E.A.No.83 of 2015 in E.P.No.150 of 2013 in O.S.No.139 of 2012.

The first respondent then filed E.A.No.110 of 2017 to club O.S.No.19 of 2015 with E.A.No.51 of 2017 filed by him under Order XXI Rule 97 CPC contending that common questions arise for consideration in both matter, that the same property is the subject matter of both proceedings, and that there is a likelihood of conflicting judgments if they are independently decided. He specifically contended that he was not a party in O.S.No.139 of 2012 and he is not claiming any right from the 2nd respondent in the subject property and he is not bound by the decree in O.S.No.139 of 2012.

Petitioner filed a counter affidavit opposing the said application. He contended that petition itself is not maintainable and it is filed only to prolong the proceedings in E.A.No.83 of 2015. It is also contended that the decree passed for delivery of possession in O.S.No.58 of 2004 binds the 1st respondent and there is no necessity to club both the proceedings.

By order dated 20.03.2019, the Court below allowed the clubbing of O.S.No.19 of 2015 with application under Order XXI Rule 97 CPC to take common evidence. It observed that the parties in the suit and the property and reliefs claims are one and the same and in order to avoid two trials and two separate judgments and to

avoid hardship to the parties to lead evidence, it is just and necessary to club both the proceedings.

Assailing the same, this Revision is filed.

Counsel for the petitioner contends that when the first respondent had availed the remedy under Order XXI Rule 97 CPC, he cannot also file O.S.No.19 of 2015 in view of Order XXI Rule 101 CPC.

This contention has no relevance to decide whether both proceedings are to be clubbed or not.

Counsel for the petitioner further contended that both these applications are not maintainable in view of a decision in an earlier suit O.S.No.58 of 2004 rendered on 17.01.2008 and it is binding on all the parties.

This contention has also no relevance on the question whether the application under Order XXI Rule 97 CPC and O.S.No.19 of 2015 which are pending on the file of the same Court are required to be clubbed.

As rightly observed by the Court below, the subject matter/property is the same in O.S.19 of 2015 and E.A.No.51 of 2017 and parties are also one and the same to both proceedings, and it would avoid two trials and two separate judgments. Parties will also not have hardship in leading evidence in both the cases.

Therefore, I see no error of jurisdiction in the order passed by the Court below warranting interference by this Court with its power under Article 227 of the Constitution of India.

So the Revision fails and is dismissed.

There shall be no order as to costs. Miscellaneous applications, if any, pending shall stand dismissed.

(M.S.RAMACHANDRA RAO, J)

2nd August 2019
RRB

