

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.6564 of 2018

O R D E R:

This Revision is filed challenging the order dt.25.06.2018 of the Chief Judge, City Civil Court, Hyderabad in Tr.OP.No.2948 of 2016.

2. Petitioners had filed the said Tr.OP., before the said Court seeking transfer of O.S.No.441 of 2012 on the file of the V Senior Civil Judge, City Civil Court, Hyderabad to the Court of XVII Senior Civil Judge, City Civil Court, Hyderabad where O.S.No.677 of 2012 is pending.

3. Petitioners contended in the said Tr.OP. that respondents 1 to 12 filed O.S.No.441 of 2012 before the V Senior Civil Judge, City Civil Court, Hyderabad against the petitioners for their eviction from the suit schedule property which is pending; that the 1st respondent had filed O.S.No.677 of 2012 before the XVII Senior Civil Judge, City Civil Court, Hyderabad against the respondents 2 to 12 and the petitioners for partition of the same suit schedule property; and since the suits are between the same parties, to avoid conflicting judgments, they ought to be tried together.

4. Counter affidavit was filed by 3rd respondent opposing the said application. It was pointed out that in O.S.No.441 of 2012 for the last 5 years the matter is coming up for trial and the petitioners never took this plea that it has to be clubbed with O.S.No.677 of 2012; that the 3rd respondent had already filed the chief examination affidavit and also marked Exs.A1 to A55 and later it was posted for cross-examination of the petitioners; and after taking two adjournments they filed the Tr.OP., only to prolong the matter. It was further contended that in the partition suit O.S.No.677 of 2012 petitioners were impleaded only because they are tenants and after the said suit decreed, the rents would have to be divided between the shareholders amicably and there is no ground to club both the suits.

5. By order dt.25.06.2018, the Court below rejected the said application stating that O.S.No.441 of 2012 is filed for eviction, mesne profits and recovery of arrears of rent, while O.S.No.677 of 2012 was filed for partition; that petitioners kept quiet for four years without taking steps for clubbing of the cases and seem to have filed this application only to prolong the litigation.

6. Assailing the same, this Revision is filed.

7. The Government Pleader for Arbitration appearing for the petitioners contended that reason assigned by the Court below is not a valid reason for transfer and clubbing of both the matters; that in fact the petitioners are disputing the title of the respondents' family; that if the matters are tried together, a comprehensive judgment would be rendered even on the issue of title, and conflict of judgments would be avoided.

8. The suit O.S.No.441 of 2012 is filed for eviction by the respondents 1 to 12 with a specific pleading that the petitioners are tenants of the suit schedule property and sought their eviction. In such a suit, existence of landlord-tenant relationship is only relevant and not the question of title.

9. Whereas in the partition suit O.S.No.677 of 2012, the pleading of the 1st respondent is that the suit schedule property was purchased under registered Sale Deed dt.05.10.1961 by the father of the 1st respondent along with his brother; that partition is sought of the suit schedule property on the ground that the request of the 1st respondent for partition was not being acceded to by the other respondents 2 to 11; and that respondents 2 to 12 were trying to alienate the property to the detriment of the 1st

respondent. Petitioners were impleaded in the said suit only because they were in possession of the suit schedule property.

10. In my considered opinion, the scope of both the suits is entirely different and it is not appropriate to club both the suits.

11. If the petitioners are disputing the title of the family of the respondents 1 to 12 over the suit schedule property, nothing prevents them from filing a suit for declaration of their title, and to establish the same in the jurisdictional Civil Court.

12. According to the 3rd respondent, the trial in O.S.No.441 of 2012 appears to be in an advanced stage and was posted for cross-examination of the respondents' witness by the petitioners, and at that stage, petitioners appear to have approached the Court below for transfer only with a view to delay the disposal of the said suit.

13. Therefore, the order passed by the Court below does not suffer from any error of jurisdiction warranting interference of this Court in exercise of its power under Article 227 of the Constitution of India.

14. Accordingly, this Civil Revision Petition fails and it is dismissed. No order as to costs.

15. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

13th March, 2019.

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