

The Hon'ble Sri Justice Raghvendra Singh Chauhan

and

The Hon'ble Sri Justice T.Amarnath Goud

C.R.P.Nos.6881 & 6956 of 2018

Common Order: (per Hon'ble Sri Justice T.Amarnath Goud)

These two Civil Revision Petitions (CRPs) arise out of two separate but similar Orders, dated 17-09-2018, in IA.Nos.823 and 824 of 2018 in IA.Nos.58 & 59 of 2017 respectively in OS.No.177 of 2016 on the file of the VIII Additional District Judge, Ranga Reddy District at L.B.Nagar.

The petitioner herein (hereinafter referred as 'the plaintiff') has filed the aforesaid suit for cancellation of four registered sale deeds executed on 02.08.1986, 14.08.1986, 29.07.2000 and 27.07.2012. Along with the suit, he filed IA.Nos.140 and 141 of 2016 for temporary injunction restraining the respondents from alienating the suit schedule property or making any construction thereon. Both those IAs were dismissed as withdrawn. While there are no changed circumstances, once again, the plaintiff has filed IA.Nos.58 and 59 of 2017 seeking an injunction restraining

the respondents from alienating the suit schedule property in favour of third parties and from raising any construction thereon. The defendants have filed IA.Nos.823 and 824 of 2018 seeking to return IA.Nos.58 and 59 of 2017 on the point of maintainability and the Court below, by Order, dated 17.09.2018, allowed both IA.Nos.823 and 824 of 2018 by holding that IA.Nos.58 and 59 of 2017 are liable to be rejected as not maintainable. Aggrieved by the said orders, the plaintiff has filed the present CRPs.

The learned Counsel for the plaintiff submitted that IA.Nos.140 and 141 of 2016 were not dismissed on merits and that they were withdrawn. Therefore, the principle of *res judicata* does not apply to the present case.

On the other hand, the learned Counsel for the defendants submitted that the plaintiff, having waited for a period of 20 long years after execution of the registered sale deeds, has got instituted the aforesaid suit seeking cancellation and that in fact, in pursuance of execution of the registered sale deeds, the defendants have obtained building construction permission from the municipal authorities, constructed an apartment and sold away some of the flats.

The learned Counsel further submitted that while dismissing IA.Nos.140 and 141 of 2016, no liberty was granted by the Court below. Ultimately, he prays to dismiss these CRPs.

We have perused the impugned orders passed by the Court below. The trial Court, while passing the said orders, has relied upon the Judgment of the Apex Court in **Arjun Singh vs. Mohindra Kumar**¹ wherein it was held as under:

“The principle that repeated applications based on the same facts and seeking the same reliefs might be disallowed by the court does not however necessarily rest on the principle of res judicata. Thus if an application for the adjournment of a suit is rejected, a subsequent application for the same purpose even if based on the same facts, is not barred on the application 'of any rule of res judicata, but would be rejected for the same grounds on which the original application was refused. The principle underlying the distinction between the rule of res judicata and a rejection on the ground that no new facts have been adduced to justify a different order is vital. If the principle of res judicata is applicable to the decision on a particular issue of fact, even if fresh facts were placed before the Court, the bar would continue to operate and preclude a fresh investigation of the issue, whereas in the other case, on proof of fresh facts, the court would be competent, nay, would be bound to take those into account and make an order conformably to the facts freshly brought before the court.”

¹ AIR 1964 SC 993

In the impugned orders, the trial Court has observed that the plaintiff is barred from instituting fresh applications unless there had been a change of circumstances from the date of dismissal of the previous injunction applications in IA.Nos.140 and 141 of 2016. The plaintiff, instead of approaching this Court by way of the present CRPs, could have filed fresh IAs before the lower Court by bringing to its notice the change of circumstances. Therefore, we do not find any illegality in the impugned orders.

Therefore, both the CRPs are dismissed. However, liberty is given to the plaintiff to move the Court below by filing appropriate applications as and when there is change of circumstances. On filing of such applications, the Court below may consider and dispose of the same on merits.

As a sequel, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

(Raghvendra Singh Chauhan, J)

(T.Amarnath Goud, J)

Dt: 28th January, 2019
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