

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

CRP.No.1962 of 2016

O R D E R:

1. This Revision is filed under Article 227 of the Constitution of India challenging the order dt.08.03.2010 in TOP.No.605 of 2014 of the Principal District Judge, Ranga Reddy District at L.B.Nagar.

2. The said TOP was filed under Section 24 of the Civil Procedure Code, 1908 seeking withdrawal of O.S.No.287 of 2013 pending on the file of I Additional Senior Civil Judge, Ranga Reddy District at L.B. Nagar and to transfer it to the XI Additional District Judge, Ranga Reddy District at L.B.Nagar, to try along with O.S.No.461 of 2008 pending on the file of the said Court.

3. Petitioners herein are plaintiffs in O.S.No.287 of 2013 on the file of the I Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar.

O.S.No.287 of 2013

4. They filed the said suit against the respondents for a declaration that the preliminary decree dt.27.01.2003 in O.S.No.117 of 2002 and final decree in I.A.No.4820 of 2006 in O.S.No.117 of 2002 on the file of the I Additional Senior Civil Judge, Ranga Reddy District are illegal, collusive and not binding on the petitioners in respect of their respective suit schedule properties, and to set aside the same. They also sought for a perpetual injunction against the respondents restraining them

from interfering with the peaceful possession and enjoyment of the petitioners over the said properties.

O.S.No.461 of 2008

5. O.S.No.461 of 2008 was filed by respondents 1 to 3 against petitioners and others for cancellation of documents No.4704/1997 and consequently document Nos.7884/2003 & 9186/2003; to cancel document No.649/1998 in favour of the 1st petitioner, document No.2117/1998 in favour of the 4th petitioner, document No.2116/1998 in favour of the 3rd petitioner, document No.659/1998 in favour of 2nd petitioner, document Nos.12025/2004, 9186/2003 and 6884/2007 in favour of petitioners 5 & 6; and to pass a decree for perpetual injunction restraining the petitioners and others from interfering with their possession and enjoyment of the property.

T.O.P.No.605 of 2014

6. Petitioners filed T.O.P.No.605 of 2014 contending that respondents 1 and 2 had filed O.S.No.117/2002 before the I Additional Senior Civil Judge, Ranga Reddy District at L.B. Nagar against the respondents 3 & 5 for partition of the plaint schedule property therein of an extent of Acs.2.00 gts in survey Nos.146A/A, 146A/B, 146A/C of Bachupally village of Quthbullapur Mandal, Ranga Reddy District; that the said suit was decreed *ex-parte* on 27.01.2003 and a preliminary decree was passed therein; later a final decree was also passed therein; that under the guise of the said decrees in O.S.No.117 of 2002,

respondents had filed O.S.No.461 of 2008 seeking relief of cancellation of the sale deeds of the petitioners alleging that 5th respondent had converted the entire Acs.4.00 gts of land in survey No.146 part, jointly purchased by him along with 3rd respondent into house plots, and sold some of the plots to the petitioners herein; and that the said plots purchased by the petitioners from 5th respondent fell in the extent of Acs.2.00 gts in survey No.146 allotted to 5th respondent.

7. Petitioners contended that this plea is totally false and baseless and petitioners had purchased their respective plots from 5th respondent and others through registered sale deeds for valuable consideration in 1998 and 2002, and were in possession of their respective plots; that petitioners' plots fell in survey Nos.146, 156 & 157 of Bachupally village and respondents 1 to 4 have no manner of right or title over the plots purchased by the petitioners from 5th respondent and others.

8. They contended that on coming to know of the decrees passed in O.S.No.117 of 2002 through the averments in O.S.No.461 of 2008, petitioner filed O.S.N.287 of 2013 before the I Additional Senior Civil Judge, Ranga Reddy District against the respondents; that the respondents remained *ex-parte* initially, but later an application filed by the respondents for setting aside the *ex-parte* order was allowed; and that they had filed application under Order VII Rule 11 CPC for rejection of plaint, which is

pending. They also contended that O.S.No.461 of 2008 was dismissed for non-prosecution by respondents 1 to 4 but later restored to the file of the Court.

9. It is contended that the parties, issues, documents and subject matter in both the suits, O.S.No.461 of 2008 and O.S.No.287 of 2013, are same and if the suits were tried by different Courts, it may lead to conflicting judgments and therefore they ought to be tried together by clubbing them together and a joint trial ought to be conducted.

10. It is contended that petitioners are defendants 6, 7, 14 to 17 in O.S.No.461 of 2008 and other defendants therein are their vendors; that plaintiffs in O.S.No.461 of 2008 are respondents 1 to 4 herein and they along with one V.Sudhakar are defendants in O.S.No.287 of 2013; that since the properties, which are subject matter of both the suits, and issues involved therein are one and the same, they ought to be tried together.

Counter of 2nd respondent

11. Counter affidavit was filed by the 2nd respondent opposing the said application. It is contended that cause of action and subject matter of both the suits are different and there is no circumstance warranting joint trial in O.S.No.461 of 2008 wherein there are 21 defendants and O.S.No.287 of 2013 where there are only six defendants.

12. It is also contended that O.S.No.461 of 2008 on the file of the XI Additional District Judge, Ranga Reddy District is coming up for cross-examination of PW1, whereas in O.S.NO.287 of 2013, petition under Order VII rule 11 CPC is pending consideration and the defendants are yet to file written statement and there are strong grounds to reject the plaint.

13. It is further contended that the relief sought in O.S.No.287 of 2013 being a declaration that the preliminary and final decrees passed in O.S.No.117 of 2002 are illegal, the said relief is purely based on law; that the said suit had been filed by persons, who are not defendants or plaintiffs in O.S.No.117 of 2002; that final decree in O.S.No.117 of 2002 was passed in 2006 and O.S.No.287 of 2013 was filed in 2013 to overcome the statutory period of limitation and the fact that the vendor of the plaintiff in O.S.No.287 of 2013 was a party to the decree in O.S.No.117 of 2002.

14. They also contended that petitioners who are plaintiffs in O.S.No.287 of 2013 were a party to the decree in O.S.No.117 of 2002. They also contended that petitioners, who are plaintiffs in O.S.No.287 of 2013, had prior knowledge of the decree since they had appeared in O.S.No.464 of 2008 in 2008 itself.

15. It is also contended that in O.S.No.461 of 2008 filed by the respondents, the respondents are prepared to prove that as on the date of execution of the documents in favour of the petitioners,

who are plaintiffs in O.S.No.287 of 2013, there were no valid documents in favour of the vendors of the petitioners for the land registered to the petitioners.

16. It is contended that the land, which the petitioners are claiming title, was originally held by 5th respondent and 3rd respondent but neither of them executed document conveying title to the petitioners and they cannot seek declaration that the decree in O.S.No.117 of 2002 is illegal.

17. It is also pointed out that the decree in O.S.No.117 of 2002 was for an extent of Acs.2.00 gts where as the O.S.No.287 of 2013 is only for 3800 sq. yards and therefore both the suits ought not to be tried together.

order dt.08.03.2016, Principal District Judge, Ranga Reddy District in TOP.No.605 of 2014

18. By order dt.08.03.2016, Principal District Judge, Ranga Reddy District dismissed TOP.No.605 of 2014.

19. The Principal District Judge pointed out that O.S.No.461 of 2008 was filed before the XI Additional District Judge, Ranga Reddy District 7 years prior to the filing of the TOP, while O.S.No.287 of 2013 was filed 5 years after O.S.No.461 of 2008 was filed; that petitioners did not explain what were they doing for

three years without taking steps for clubbing of both the suits for conducting joint trial; that in O.S.No.287 of 2013, the application under Order VII Rule 11 CPC for rejection of plaint is pending and counter was not filed and if ultimately the said petition is allowed, the suit would not stand and even if it is dismissed, then defendants need to file written statement, issues have to be framed which would take substantial time.

20. The Court held that subject matter of both the suits is not one and the same, and O.S.NO.461 of 2008 is at the end of the trial and it cannot be stalled on the pretext of O.S.No.287 of 2013 being filed, and by transferring O.S.No.461 of 2008 to the said Court.

21. It also observed that O.S.No.287 of 2013 has to be decided on legal aspects and some of the persons instituted O.S.No.287 of 2013 are not parties in O.S.No.117 of 2002 and even if the subject matter of both the suits is one and the same, the findings in O.S.No.117 of 2002 will not have any bearing on the findings in O.S.No.461 of 2008 which is a comprehensive suit. It held that filing of this application TOP.No.605 of 2014 is an attempt of the petitioners to drag on the proceedings and so the transfer petition is liable to be dismissed.

22. Assailing the same, this Revision is filed.

23. Notices sent by the counsel for petitioners to respondents 3 & 5 have been returned with endorsement “unclaimed”. Therefore, they are deemed to be served. Notice sent to 4th respondent is served but there is no representation on behalf of the 4th respondent.

24. Heard Sri K.Shankaraiah, counsel for petitioners and Sri K.Jawahar, counsel for respondents 1 & 2.

Contentions of parties

25. Counsel for the petitioners contended that the order passed by the Court below cannot be sustained.

26. According to him, in both the suits, land in survey No.146 is subject matter; that petitioners as well as respondents are parties in both the suits; that petitioners have obtained title to the various plots which are subject matter in O.S.No.287 of 2013 under registered Sale Deeds No.649/1998 (1st petitioner), 2117/1998 (4th petitioner), 2116/1998 (3rd petitioner), 650/1998 (2nd petitioner) and Nos.12025 of 2004, 9186/2003 and 6884/2007(respondents 5 & 6); that it is these documents which are subject matter of O.S.No.461 of 2008; that the vendors of the petitioners are K.Rajgopal Rao and others; but respondents have filed O.S.No.461 of 2008 against the petitioners and their vendors, including the said K.Rajgopal Rao, alleging that respondents 1 and 2 herein had purchased Acs.2.00 gts in survey No.146A and 146C of Bachupally village from 3rd respondent; that 3rd respondent along with 5th respondent purchased total extent of

Acs.4.00 gts from defendants 9 to 12 in O.S.No.461 of 2008; that 3rd respondent alienated his Acs.2.00 gts to them but 5th respondent is not permitting partition of the same; that they filed O.S.No.117 of 2002 against respondents 3 and 5, and obtained preliminary decree O.S.No.117 of 2002 on 27.01.2003 and final decree on 13.07.2007; that the petitioners were forced to file O.S.No.287 of 2013 to challenge the said decrees since the sale deeds executed in their favour would be in jeopardy; that there is therefore definite inextricable connection and linkage between both the suits warranting the suits to be heard together. He also contended that mere fact that O.S.No.287 of 2013 is filed later to O.S.No.461 of 2008, cannot be a ground to decide both the suits separately and so the order passed by the Court below should be set aside.

27. Counsel for respondents 1 & 2 refuted the above contentions and supported the order passed by the Court below.

The consideration by the Court

28. From the facts narrated above, it is clear that petitioners herein are the plaintiffs in O.S.No.287 of 2013 and are also arrayed as defendants 14, 16, 17, 15, 6 & 7 in O.S.No.461 of 2008.

29. No doubt there are other parties also arrayed as defendants therein, but in O.S.No.461 of 2008 respondents had questioned

the documents No.649/1998, 2117/1998, 2116/1998, 650/1998, 12025/2004, 9186/2003 and 6884/2007 in favour of the petitioners.

30. The basis of the claim of the respondents in O.S.No.461 of 2008 is the preliminary decree obtained by them in O.S.No.117 of 2002 rendered by the I Additional Senior Civil Judge, Ranga Reddy on 27.01.2003 and the final decree which was passed on 13.07.2007 to which suit, respondents 3 to 5 herein are parties; and it is the decree in O.S.No.117 of 2002 which is challenged in O.S.No.287 of 2013 by the petitioners. Also the land admeasuring approximately 3,800 sq. yards in O.S.No.287 of 2013 is part of the land of Acs.2.00 gts in O.S.No.461 of 2008.

31. Therefore, the title of the parties to the properties claimed by them are directly and substantially in issue in both the suits and the decision in one suit would have impact on the decision in another, and to avoid conflicting judgments, it is necessary that both the suits are decided by the same Court.

32. The reasoning given by the Court below cannot be accepted because mere fact that O.S.No.287 of 2013 was filed subsequent to O.S.No.461 of 2008 is not relevant nor is the stage where the suits are at the present relevant; and the finding of the Court below that petitioners did not do anything for three years after filing O.S.No.287 of 2013 for clubbing both the suits is not also

correct, because the TOP was filed in 2014, a year after O.S.No.287 of 2013 is filed.

33. The Court below was also not correct in going into the question who are the parties to O.S.No.117 of 2002 and whether the said suit is to be decided purely on law or on fact, and its opinion that the findings in O.S.No.117 of 2002 have no bearing in O.S.No.461 of 2008, is also not correct.

34. Therefore, for all these reasons, this Civil Revision Petition is allowed; order dt.08.03.2016 in TOP.No.605 of 2014 of the Principal District Judge, Ranga Reddy District at L.B. Nagar is set aside; and the said O.P. is allowed withdrawing O.S.No.287 of 2013 from the file of I Additional Senior Civil Judge, Ranga Reddy District at L.B. Nagar and transferring it to the file of XI Additional District Judge, Ranga Reddy District at L.B.Nagar, to try along with O.S.No.461 of 2008 pending on its file. No order as to costs.

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

M.S. RAMACHANDRA RAO, J

03rd June, 2019.

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