

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION NO.287 OF 2020

O R D E R:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.23.01.2020 in I.A.No.1720 of 2019 in O.S.No.961 of 2019 of the II Additional Chief Judge, City Civil Court, Hyderabad.

2. The petitioner herein is the 1st defendant in the suit.

Relief sought in OS.961 of 2019

3. The 1st respondent filed the said suit on 17.10.2019 against the petitioner and other respondents for declaration of his title to the plaint schedule property and for recovery of possession thereof by evicting the petitioner and other defendants if necessary by demolishing the constructions made by them in the suit schedule property.

The case of the 1st respondent in OS.No.701 of 2019

4. It is not in dispute that prior thereto, the 1st respondent had filed O.S.No.701 of 2019 before the IV Junior Civil Judge, City Civil Court, Hyderabad against the petitioner and the Greater Hyderabad Municipal Corporation (GHMC) to declare that the sanction for construction of two cellars plus 17 upper floors with A and B blocks *vide* File No.1/C17/13164/2018/HO dt.06.10.2018 in favour of the petitioner by GHMC is null and void, and for a perpetual injunction restraining the petitioner from making any construction therein.

5. Importantly, the subject matter of both these suits is the same property which is a house property bearing No.6-3-1099/1/2/1 admeasuring 1286 square yards in part of Sy.No.22 of Somajiguda, Hyderabad.

6. In O.S.No.701 of 2019, it was the case of the 1st respondent that he is the absolute owner and possessor of the property; that the said property was owned by one Osman Ali Khan who gifted it through oral Hiba to the grandmother of the 1st respondent by name Rukiya Begum out of love and affection towards her as she was his step sister. It is contended by him that after receiving the said property as a gift, Smt. Rukiya Begum constructed a house in 1974 in the subject property along with compound wall and the same is assessed house tax by GHMC; that house No.6-3-1099/1/2/1 was assigned to it; that the said Rukiya Begum who is the 1st respondent's grandmother expired on 01.07.2002 intestate leaving behind her son Mir Raza Ali Baquri, the 1st respondent's father; that the 1st respondent's father expired on 10.09.2007 and so the 1st respondent inherited the property as the sole legal heir. He alleged that in September, 2018, the petitioner along with his workmen and associates raised metal corrugated sheets in an extent of 7500 meters by blocking entry to the suit schedule property, but the North West and the East side compound walls of the suit schedule property remained intact though in dilapidated stage. He alleged that when he came to know about the raising of the said corrugated sheets, he approached the petitioner and demanded them to remove the same and the petitioner removed one

sheet and made way of entry to the suit schedule property. He alleged that again the petitioner blocked the ingress and egress of the suit schedule property by blocking the same with huge barricades and he came to know that the petitioner was going to start huge construction in an extent of 7409.78 square meters in the suit schedule property. He admitted that the petitioner had started such construction in an area including the suit schedule property and he came to know that permission has been accorded by GHMC to proceed with the said construction on 06.10.2018. Certain other allegations were also made and it is alleged that the petitioner threatened the 1st respondent that it would complete construction by engaging labour and deploying anti-social elements and so he is entitled to the reliefs of perpetual injunction and declaration.

The case of the 1st respondent in OS.No.961 of 2019

7. In subsequent suit O.S.No.961 of 2019, all these allegations are repeated. In addition it is also alleged that the petitioner had no right to make construction in the property. The 1st respondent contended in this suit that though there was an *ex parte* injunction granted in I.A.No.261 of 2019 in O.S.No.701 of 2019, the same was vacated against which the 1st respondent filed CMA No.53 of 2019 before the III Additional Chief Judge, City Civil Court, Hyderabad which was also dismissed. He further contended that during the pendency of the CMA, the 1st respondent came to know that the petitioner through registered Development Agreement-cum-GPA dt.12.09.2018 took from

respondents 2 and 3 an extent of 4182 square yards for development; that there was another registered Development Agreement-cum-GPA dt.22.10.2018 taken by the petitioner from respondents 4 and 5 for 3840 square yards, and the petitioner was also claiming to have purchased 1195 square yards under a registered sale deed Document No.3148/2006. He disputed the title of respondents 2 to 5 and alleged that the petitioner and respondents 2 to 5 brought into existence the said Agreements by wrongly including the suit schedule property owned and possessed by the 1st respondent and obtained construction permission. It is also alleged that the petitioner occupied the suit schedule property and was doing excavation work with a view to dig cellars without any manner of right, and as the GHMC had not taken any action, he was constrained to file subsequent suit O.S.No.961 of 2019 on 17.10.2019.

IA 1720 of 2019 filed by the petitioner under Or.7 Rule 11 CPC

8. While O.S.No.961 of 2019 was pending, the petitioner filed I.A.No.1720 of 2019 under Order VII Rule 11 CPC to reject the plaint contending that having filed O.S.No.701 of 2019 before IV Junior Civil Judge, City Civil Court, Hyderabad against the petitioner and GHMC for declaration and injunction, the 1st respondent could not have filed the subsequent suit O.S.No.961 of 2019 and that there is bar under Order II Rule 2 CPC to file the subsequent suit O.S.No.961 of 2019. It was contended that the 1st respondent failed to take leave of the Court under Order II Rule 2(3) CPC before instituting O.S.No.701 of 2019 and that the suit O.S.No.961 of 2019 is therefore barred by *res judicata*.

The counter of the 1st respondent in IA No.1720 of 2019

9. The 1st respondent filed counter-affidavit opposing the said Application and stating that though he filed O.S.No.701 of 2019, that suit was filed only against GHMC and the petitioner, and that the cause of action in O.S.No.961 of 2019 was not in concurrence with the cause of action in O.S.No.701 of 2019 and that the cause of action continued and was still continuing. He specifically contended that he lost possession of the suit property after filing O.S.No.701 of 2019 and so he filed the instant suit.

The order of the trial court in IA.No.1720 of 2019

10. By order dt.23.01.2020, the Court below dismissed I.A.No.1720 of 2019. It accepted the contention of the 1st respondent that O.S.No.961 of 2019 is a comprehensive suit for reliefs of declaration and recovery of possession with injunction in the light of the pleading of the 1st respondent that he lost possession during the pendency of O.S.No.701 of 2019. It observed that though the cause of action may relate back to the earlier suit, it cannot be said that the claim of the 1st respondent is barred under Order II Rule 2 CPC. It also observed that the 1st respondent never expected that he was required to file comprehensive suit for declaration and recovery of possession as on the date of institution of O.S.No.701 of 2019 and there was no scope for him to file an Application under Order II Rule 2 CPC.

11. Assailing the same, this Revision is filed.

The present Revision

12. Heard counsel for the petitioner and counsel for the 1st respondent.

13. Counsel for the petitioner contended that there is no averment in the plaint in O.S.No.961 of 2019 that the 1st respondent had lost possession after filing of O.S.No.701 of 2019 and therefore, the basis for the order of the Court below is not proper. He also contended that Order II Rule 2(3) CPC requires the 1st respondent to obtain leave of the Court if he is not seeking all the reliefs he was supposed to seek while filing O.S.No.701 of 2019, and that since the 1st respondent had failed to do so, the Court below ought to have allowed I.A.No.1720 of 2019 and held that O.S.No.961 of 2019 is barred by virtue of Order VII Rule 11 read with Order II Rule 2 CPC.

14. Counsel for the 1st respondent however supported the order passed by the Court below.

The Consideration by the Court

15. I have noted the contentions of both sides.

16. While I agree with the contention of the counsel for the petitioner that there is no specific pleading in the suit filed by the 1st respondent in O.S.No.961 of 2019 about his loss of possession pending O.S.No.701 of 2019, the fact remains that in O.S.No.701 of 2019, the 1st respondent had only sought relief against the GHMC to declare the sanction for construction granted on 06.10.2018 to the petitioner as null and void and

sought perpetual injunction restraining the petitioner from making construction in the suit schedule property.

17. Admittedly, when the 1st respondent filed I.A.No.261 of 2019 for *ex parte* ad interim injunction in O.S.No.701 of 2019, though it was granted initially, it was vacated later and the challenge to the said order in CMA No.53 of 2019 before the III Additional Chief Judge, City Civil Court, Hyderabad also failed.

18. According to the 1st respondent, he came to know about execution of (i) the registered Development Agreement-cum-GPA dt.12.09.2018 in favour of the petitioner from respondents 2 and 3, (ii) registered Development Agreement-cum-GPA No.3152/2018 dt.22.10.2018 from respondents 4 and 5 and (iii) registered sale deed No.3148/2006 and transfer of interest by respondents 2 to 5 in favour of the petitioner thereby.

19. These facts were not known to the 1st respondent when he filed O.S.No.701 of 2019. Having thus realized that there is a serious challenge to his title by respondents 2 to 5' activities, the 1st respondent then chose to file O.S.No.961 of 2019.

20. In my considered opinion, the basis for the earlier suit was not dispossession as such by the 1st respondent but the action of the GHMC in granting the sanction and permitting the petitioner to proceed with the construction. There was therefore no necessity for the 1st respondent to

seek leave under Order II Rule 2(3) CPC as is being contended by the counsel for the petitioner.

21. The subsequent suit O.S.No.961 of 2019 is based on a distinct cause of action particularly the 1st respondent coming to know about the Development Agreements-cum-GPAs executed by respondents 2 to 5 in favour of the petitioner.

22. It was held in **Inacio Martins Vs. Narayan Hari Naik**¹ that Order II Rule 2 CPC is based on the principle that defendants should not be twice vexed for the same cause of action by splitting the claim and the reliefs, but the Rule does not preclude a second suit based on a distinct cause of action. The doctrine of *res judicata* differs from the rule embodied in Order II Rule 2, in that, the former places emphasis on the plaintiff's duty to exhaust all available grounds in support of his claim while the latter requires the plaintiff to claim all reliefs emanating from the same cause of action.

23. In **Kunjan Nair Sivaraman Nair Vs. Narayanan Nair and others**², the Supreme Court had again reiterated that the cause of action in the earlier suit must be the same on which the subsequent suit is based for Order II Rule 2 (3) CPC to apply and that it has to be shown by the defendants for supporting their plea of bar of Order II Rule 2 (3) CPC that the second suit of the plaintiff filed is based on the same cause of action on which his earlier suit was based and that because he has not

¹ (1993) 3 SCC 123

² (2004) 3 SCC 277

prayed for any relief and he had not obtained leave of the Court in that connection, he cannot sue for that relief in the present second suit. It was also observed that when the question arises as to whether the cause of action in the subsequent suit is identical with that in the first suit, one criterion to be applied is *whether the same evidence will maintain both actions*.

24. Applying the ratio of these decisions, I am satisfied that when the 1st respondent filed O.S.No.701 of 2019, he was not aware of the claims of respondents 2 to 5 over the plaint schedule property and once he came to know about the same after filing of O.S.No.701 of 2019, he instituted the subsequent suit seeking a more comprehensive relief of declaration of title and recovery of possession and so the bar under Order II Rule 2 CPC does not arise and there was no necessity for the 1st respondent to seek leave under Order II Rule 2(3) CPC in OS.701 of 2019.

25. I therefore do not find any merit in this Revision which is accordingly dismissed. No costs.

26. Pending miscellaneous petitions, if any, shall also stand dismissed.

M.S.RAMACHANDRA RAO, J

Date: 06-03-2020

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