

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

**FRIDAY, THE THIRTEENTH DAY OF MARCH
TWO THOUSAND AND TWENTY**

PRESENT

THE HONOURABLE SRI JUSTICE A. RAJASHEKER REDDY

CIVIL REVISION PETITION NO: 586 OF 2020

Petition under Article 227 of the Constitution of India, aggrieved by the Order dated.06.01.2020 passed in O.P No.580 of 2019 on the file of the Court of the Principal District Judge, Ranga Reddy, District, at L.B. Nagar

Between:

1. Smt. Mahadi Begam, W/o Late S.K.Hasan aged about 75 years, Occ Household, R/o 1984 MIG, BHEL, Nallagandla Village, Serilingmapally Mandal, R.R District.
2. Smt.Najeebunnisa Begum, W/o Late Hasan Raza, aged about 53 years, Occ Household, R/o 1984 MIG, BHEL, Nallagandla Village, Serilingmapally Mandal, R.R District.

...Petitioners/Respondents

AND

1. Venteddu Srinivasa Reddy, S/o Buchi Ram Reddy, aged about 61 years, Occ Employee, R/o H.No.13-82, Huda Colony, Chandanagar, Serilingampally Mandal, Ranga Reddy District.

...Respondent/Petitioner

2. Syed Abrar Hasan, S/o Late S.K. Hasan, aged, about 51 years, Occ Business, R/o 1984 MIG, BHEL, Nallagandla Village, Serilingmapally Mandal, R.R. District
3. Smt.Lateefunnissa Begum, W/o Mohd. Ahmed, aged about 56 years, Occ Housewife, R/o H.No.4-3-589/I, Ram Koti, Hyderabad. (Respondent No. 2 and 3 are not necessary parties to this Civil Revision Petition)

...Respondents/Respondents

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to suspend the orders passed in Transfer O.P. No. 580 of 2019, dated 06.01.2020 passed by the Principal District Judge, Ranga Reddy District.

Counsel for the Petitioners: SRI ALI FAROOQUE

Counsel for the Respondent No.1: BOTLA VENKATESWARA RAO

Counsel for the Respondent Nos. 2 and 3: NONE APPEARED

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

C.R.P.NO.586 OF 2020

ORDER

The case of the petitioners is that they, and respondents 2 and 3 herein are the legal heirs of late S.K.Hasan, who is the original owner of the suit schedule property, which is a housing bearing No.1984 MIG at Phase-I built up in an area of 815.20 sq. feet admeasuring 255.36 sq. yards equivalent to 213.418 sq. mts. situated at BHEL, Nalgandla village, Serilingampally mandal, Rangareddy District, with the boundaries mentioned therein.

The case of the contesting respondent No.1 is that during the life time of S.K.Hasan, for his family necessities, he sold the suit schedule property to him and executed a registered agreement of sale-cum-general power of attorney bearing No.939 of 2004 dated 29.01.2004, in his favour after receiving entire sale consideration and delivered possession to him, and that about a couple of days thereafter and before executing registered sale deed, he expired, and that on humanitarian grounds, he allowed the petitioners herein, who are the legal heirs of late S.K.Hasan, to reside in the suit schedule house on rental basis and also on promising to execute the formal registered sale deed as and when desired by him. Alleging that petitioners herein are not paying the rents and also not executing the sale deed, he filed suit in O.S.No.1135 of 2007 on the file of III Additional Senior Civil Judge, Rangareddy District for specific performance and for eviction of the revision petitioners and the 2nd respondent herein.

Subsequent to the filing of the above suit by the 1st respondent, the petitioners herein also filed suit in O.S.No.604 of 2007 on the file of III Additional District Judge, Rangareddy District at L.B. Nagar for partition of suit schedule property, separation possession and perpetual injunction. The petitioners herein also sought for a declaration that the agreement of sale-cum-general power of attorney vide registered document No.939/2004 dated 29.01.2004, as null and avoid and not binding on them.

In the suit filed by the petitioners herein in O.S.No.604 of 2007, the evidence is closed and the matter is coming up for arguments on behalf of the plaintiffs.

The earlier suit filed by the 1st respondent herein in O.S.No.1135 of 2007, is at the stage of service of summons.

At this stage, the 1st respondent herein, who is the plaintiff in O.S.No.1135 of 2007, and the 2nd defendant in O.S.No.604 of 2007, filed the present Tr.O.P.No.580 of 2019 on the file of Principal District Judge, Rangareddy District, under Section 24 of the CPC, seeking transfer of O.S.No.1135 of 2007 on the file of VII Additional Senior Civil Judge's Court, to the court of X Additional District Judge (FTC), Rangareddy District to be disposed off along with O.S.No.604 of 2007.

In the transfer petition, to the query by the court that whether there is any need for the transfer petitioner to lead evidence in his case, or whether the evidence recorded on his behalf in O.S.No.604 of 2007, as defendant No.2 in the said suit, would be sufficient for disposal of the suit in O.S.No.1135 of 2007, the counsel for the transfer petitioner, has given an undertaking to argue both the suits without further evidence in O.S.No.1135 of 2007.

The court below, considering the facts and circumstances of the case, and the submissions of the learned counsel for the transfer petitioner, and holding that the subject property and the contesting parties in both the suits are one and the same, and the relief sought for in O.S.No.1135 of 2007, is directly connected with the relief of declaration of agreement of sale as null and void in O.S.No.604 of 2007, allowed Tr.O.P.No.580 of 2019 by order and decree dated 06.01.2020, and the suit in O.S.No.1135 of 2007, pending on the file of VII Additional Senior Civil Judge, Rangareddy District at L.B. Nagar, was ordered to be withdrawn and transferred to the file of file of X Additional District Judge (FTC), Rangareddy District for being disposed off along with O.S.No.604 of 2007. Further, the learned X Additional District Judge (FTC) R.R. District at L.B. Nagar directed to

dispose off both the suits together on the basis of evidence recorded in O.S.No.604 of 2007. Aggrieved by the same, the petitioners herein, who are the defendants in O.S.No.1135 of 2007, filed the present revision.

Learned counsel for the petitioners, while reiterating the above factual aspects, would further submit that the 1st respondent herein who is the transfer petitioner, submitted before the court below that the evidence led on his behalf in O.S.No.604 of 2007 as defendant No.2 in O.S.No.604 of 2007, would be sufficient for disposal of his suit in O.S.No.1135 of 2007 along with O.S.No.604 of 2007 and that he would argue the matter without any further evidence. Learned counsel submits that the undertaking given by him is only in respect of his case, and that undertaking cannot bind the defendants (petitioners herein) in the suit in O.S.No.1135 of 2007. Learned counsel submits that the court below, without noticing this fact, while allowing the transfer petition, ordered for disposal of both the suits together based on the evidence led in O.S.No.604 of 2007. Therefore, the learned counsel submits that the defendants in the suit in O.S.No.1135 of 2007, who are the petitioners herein, may be given opportunity to lead evidence in the said suit.

Heard the learned counsel for the appearing for the contesting respondent No.1, who submits that the subject property in both the suites is one and the same, and the contesting parties are also one and the same, therefore, the court below found that both the suits have to be tried together, and accordingly allowed the transfer petition holding that the evidence recorded in O.S.No.604 of 2007, would be sufficient for disposal of O.S.No.1135 of 2007, as such no exception can be taken in respect of the impugned order.

From the material on record it could be seen that the 1st respondent herein filed the suit in O.S.No.1135 of 2007 for specific performance based on the agreement of sale dated 29.01.2004 executed by late S.K.Hassan, against his legal heirs, the revision petitioners herein, who are the plaintiffs in O.S.No.604 of 2007, and the said suit is filed seeking for partition of same property, and also for declaration of agreement of sale dated 29.01.2004, as null and void and not

binding on them. In this suit i.e., O.S.No.604 of 2007, the trial court has specifically framed an issue in this regard and, therefore, the trial court considering the facts and circumstances, and as the suit schedule property, and parties are one and the same and the relief sought for in O.S.No.1135 of 2007, is directly connected with the issue No.2 framed in O.S.No.604 of 2007 with regard to declaration of agreement of sale as null and void, and that the evidence lead in O.S.No.604 of 2007, would be sufficient to dispose off both the suits, allowed the transfer petitioner and directed to dispose of both the suits without any further evidence.

In this case it is to be further seen that the 1st respondent herein, who is the transfer petitioner, has submitted that the evidence led on his behalf in O.S.No.604 of 2007 as defendant No.2 in the said suit, would be sufficient for disposal of the suit in O.S.No.1135 of 2007 and thus he has given an undertaking that he would not lead any further evidence, and that he would argue the case. But the grievance of the revision petitioners herein is that, by virtue of the undertaking given by the 1st respondent, the revision petitioners cannot be prevented from leading evidence in O.S.No.1135 of 2007, since they have not given any such undertaking not to lead evidence on their behalf, and that if any undertaking is given by the 1st respondent, it binds him and not the revision petitioners.

There is merit in the submission of the learned counsel for the revision petitioners, since the undertaking given by the respondent No.1, cannot forfeit the right of the revision petitioners to lead evidence in O.S.No.1135 of 2007. Hence, the revision petitioners are permitted to lead evidence in O.S.No.1135 of 2007. But it is to be seen that when one party is allowed to lead evidence, other party should also be given opportunity to lead evidence, to avoid further complications, and the same would be in compliance with the principles of natural justice.

In view of the same, the impugned order to the extent of clubbing both the suits is confirmed, but however, the portion of the impugned order directing to

dispose of both the suits based of evidence recorded in O.S.No.604 of 2007, is modified to the effect that the parties in O.S.No.1135 of 2007, shall be permitted to lead evidence, and thereafter, both the above said suits shall be disposed of together in accordance with law.

As the suits are of the year 2007, the court of X Additional District Judge (FTC), Rangareddy District at L.B. Nagar, shall endeavor to dispose of the suits, as expeditiously as possible, preferably within a period of four months from the date of receipt of a copy of this order, and it is needless to observe that parties shall co-operate for the disposal of the suits within the time frame fixed by this court.

The revision petition is accordingly disposed of.

Interlocutory applications pending, if any, shall stand closed. No order as to costs.

SD/- I. NAGALAKSHMI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Principal District Judge, Ranga Reddy District, at L.B. Nagar
2. One CC to Sri Ali Farooque, Advocate [OPUC]
3. One CC to Sri Botla Venkateswara Rao, Advocate [OPUC]
4. Two CD Copies

V. J.

HIGH COURT

ARRJ

DATED: 13/03/2020

ORDER

CRP.No.586 of 2020



DISPOSING OF THE CIVIL REVISION PETITION WITHOUT COSTS

⑤
VLW
18/5/20