
(2001) 09 AP CK 0126

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No.4189 of 1999

Kona Kanthamma and Another

APPELLANT

Vs

Guntamukkala Sreenivasa Rao

RESPONDENT

Date of Decision : 25-09-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 151

Citation : (2009) 2 ALD 389 : (2002) 2 ALD 849 Supp : (2002) 1 AnWR 79

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : V.V.L.N. Sarma, for the Appellant; V.L.N.G.K. Murthy, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The revision petitioners are the petitioners/appellants in I.A.No.435 of 1999 in R.C.A.No.24 of 1996 on the file of the Rent Controller-Appellate Authority (Principal Senior Civil Judge), Kakinada.

2. The facts of the case in brief reads as follows:

The revision petitioners filed an application u/s 10 read with Section 151 C.P.C. praying for stay of the proceedings including the hearing of the appeal in R.C.A.No.24 of 1996 pending disposal of the appeal in A.S.No.57 of 1995 pending on the file of the IV Additional District Judge, Kakinada. The case of the revision petitioners is that they have preferred R.C.A.No.24 of 1996 against the order of eviction made in R.C.C.No.30 of 1985 on the file of the Principal Senior Civil Judge-Rent Control Appellate Authority, Kakinada. It is also their case that they are disputing the title of the respondent over the petition schedule property. The 1st petitioner is the mother of the 2nd petitioner and the sister of the respondent. She filed a suit in O.S.No.937 of 1987 for declaration that Ex.A5-registered sale deed dated 12.05.1973 executed in favour of the respondent as invalid and non-existing and not binding on the petitioners and also for the relief

of permanent injunction. Since it is a comprehensive suit, the very title is disputed and since the subject matter of both the proceedings is one and the same and the question to be decided in both the proceedings is also one and the same, stay of proceeding has to be granted. It is stated that the said suit was dismissed. Aggrieved by the same, the revision petitioners have preferred A.S.No.57 of 1995 on the file of the IV Additional District Judge, Kakinada and the same is pending disposal. The application in I.A.No.435 of 1999 in R.C.A.No.24 of 1996 on the file of the Rent Control Appellate authority-Cum-Principal Civil Judge, Kakinada was dismissed by an order, dated 14.07.1999. Against which, the present revision petition is filed.

3. Sri V.V.L.N.Sarma, learned counsel representing the revision petitioners had contended that since the very sale deed is in dispute and the title is denied, the question has to be decided both in the pending appeal and also the in the rent control appellate authority. The learned counsel had drawn my attention to paragraph 6 of the impugned order and contended that the Court below having observed that the subject matter is one and the same and the dispute is also one and the same, had totally erred in dismissing the application. The learned counsel further contended that though Section 10 C.P.C. as such cannot be made applicable to the Rent Control proceedings, it is a fit matter where the relief has to be granted by resorting Section 151 C.P.C. The learned counsel also placed strong reliance in K.V.UMA MAHESWARA RAO VS. GANDAM SUJATHA¹.

4. The learned counsel Sri Ravi Kumar representing Sri V.L.N.Murthy had contended that Section 10 C.P.C. has no application at all to the rent control proceedings. The learned counsel had placed strong reliance in GOLLU BHAVANI SANKAR VS.BHOGAVALLI RAJESWARA RAO², AMRUTLAL VS. THE PRINCIPAL RENT CONTROLLER, HYDERABAD³ and also a decision reported in M.SUBBARAMAYYA VS.B.N.SWAMY⁴. The learned counsel had drawn my attention that the revision petitioners had filed an application u/s 10 C.P.C. in I.A.No.3082 of 1993 for stay of further proceedings in R.C.C 30 of 1985 till the dismissal of the appeal and the same was rejected by the Court below by an order dated 04.02.1994.

5. Heard both the learned counsel.

6. Section 10 C.P.C. dealing with stay reads as follows"

"No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any court beyond the limits of India established or continued by the Central Government and having like jurisdiction or before the Supreme Court.

Explanation:

The proceedings of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action".

7. In Manta Subbaramayya's case(Supra-4) it was held that Section 10 C.P.C. is attracted only when the previously instituted proceedings and the subsequently instituted proceedings are suits and eviction proceedings under the Rent Control Act cannot be said to be suits and more over, for the application of Section 10 C.P.C., both the Courts must be of concurrent jurisdiction. In Gollu Bhavani Shankar's Case (Supra-2) it was held that an enquiry in a Rent Control proceedings is summary in nature. Hence, the plaintiffs' suit cannot be stayed u/s 10 C.P.C. In Amrutlal's Case (Supra-3) a Division Bench while dealing with this question had clearly held that Section 10 C.P.C. cannot be availed of by the Rent Controller, to stay the proceedings before him. Rent Controller cannot even stay the suit invoking Section 151 C.P.C.

8. The learned counsel representing the petitioners had placed strong reliance on K.V.Uma Maheswararao's case. In the said decision it was observed that the Subsequent O.P. filed by the respondent wife under the Hindu Marriage Act, for restitution of conjugal rights, though a special enactment and is to be tried by a Special Court, cannot be proceed with pending the earlier suit, where the matter in issue is substantially the same.

9. The learned counsel for the petitioners had strenuously contended that since the Court below also had observed that the question involved in both the proceedings are same, the Court below should have exercised the discretion by granting stay instead of dismissing the application. At paragraph 6 of the impugned order it was observed as follows:

" In the above circumstances, it is to be seen whether the provision u/s 10 is applicable to the present circumstances of the case. It is seen that subject matter in the earlier suit in O.S.No.987 of 1987 and the subject matter in the present eviction proceedings are one and the same, so also the dispute relating to title of the respondent herein over the demised premises is also common in both the proceedings and the civil court in O.S.No.987 of 1987 has given finding to the effect that respondent herein is the owner of demised premises and that the petitioners herein are the tenants in the demised premises."

10. The contention of the learned counsel for the petitioners is that the Court below had totally erred in dismissing the application. The revision petitioners had denied the title in the rent control proceedings and also had questioned the validity of the sale deed in a suit and that itself will not be a ground for staying the proceedings especially in the light of the fact that a similar application was made when the original proceedings were pending. Hence the Court below had rightly rejected the application. In view of the said fact, it cannot be said that the present application filed by the petitioners u/s 10 C.P.C. is maintainable in the circumstances of the case. In view of the above circumstances, I am of the considered view that there are no merits in the revision petition.

11. Accordingly the revision petition is dismissed. In view of the relationship between the parties, each party do bear their own costs.