
(2014) 11 AP CK 0142

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 6248 of 2012

Palli Rajulamma and Others

APPELLANT

Vs

Pirla Seetharam and Others

RESPONDENT

Date of Decision : 06-11-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10
Constitution of India, 1950 — Article 227

Citation : (2015) 1 ALD 591 : (2015) 2 ALT 41

Hon'ble Judges : M. Seetharama Murthi, J

Bench : Single Bench

Advocate : V. Sudhakar Reddy, Advocates for the Appellant

Judgement

M. Seetharama Murthi, J.—This Civil Revision Petition under Article 227 of the Constitution of India is filed by the plaintiffs/respondents assailing the orders dated 12.09.2012 of the learned Junior Civil Judge, Amadalavalasa of Srikakulam District made in I.A. No. 239 of 2012 in O.S. No. 28 of 2012 filed by the first defendant under Section 10 of the Code of Civil Procedure requesting to grant stay of all further proceedings in the aforementioned suit pending disposal of O.S. No. 29 of 2011 on the file of the same Court.

2. The basic facts necessary for consideration are as follows:

"The instant suit O.S. No. 28/2012 ("the subsequent suit" for brevity) was brought by the plaintiffs 1 to 3/revision petitioners herein and the plaintiff no. 4 against the defendants/respondents herein for perpetual injunction to restrain the first defendant and his men, relatives etcetera from ever interfering with the said plaintiffs' peaceful possession and enjoyment of the plaint schedule immoveable property. The first defendant is resisting the said suit. The 1st defendant in O.S. No. 28/2012 had brought the first suit O.S. No. 29 of 2011 ("the previously instituted suit" for brevity) against the plaintiffs 2 and 4 in O.S. No. 28/2012 and others as defendants for perpetual injunction in respect of the wet land in an extent of Ac. 1.69 cents in Survey No. 15/1 situated in Dabbapadu

village, Miriyyappalli Cluster of Laxminarusupeta Mandal, Srikakulam District. The defendant in the subsequent suit, who had previously instituted his suit for perpetual injunction, had sought stay of the subsequent suit under Section 10 of the Code of Civil Procedure." On merits, the trial Court had allowed the petition and stayed the suit in O.S. No. 28/2012, which is a subsequent suit. Aggrieved of the said orders, the plaintiffs 1 to 3 in the subsequent suit had filed the present revision petition.

3. I have heard the submissions of the learned counsel for both the sides. I have perused the material record.

4. Now the point for determination in the Civil Revision Petition is-Whether the first defendant in O.S. No. 28/2012 has made out valid and sufficient grounds for granting stay of the said subsequent suit pending final disposal of the previously instituted suit O.S. No. 29/2011, which is also pending on the file of the very same Court?

5. POINT:

5. (a) The introductory facts are already stated supra. In the first instance, One P. Seetharam as plaintiff brought a suit in O.S. No. 29/2011 against Palli Rajulamma, Palli Krishnaveni, Challa Lakshmi, Challa Ramanamurthy and Ravada Sriramulu for a perpetual injunction in respect of the land in an extent of Ac. 1.69 cents (0.68 hectares) in Survey No. 15/1 situated at Dabbapadu village, Miriyyappalli Cluster of Laxminarusupeta Mandal, Srikakulam District. While so , the defendants 1 to 3 in the said suit viz., Palli Rajulamma, Palli Krishnaveni, Challa Lakshmi and another Ravada Vijayalakshmi as the plaintiffs brought the subsequent suit in O.S. No. 28/2012 for perpetual injunction against Pirla Sitharam, who is the plaintiff in the previously instituted suit O.S. No. 29/2011, and another in respect of three items of property of an extent of Ac. 0.13 cents each situated at survey No. 15/1 of the same village. Thus, the plaintiff in O.S. No. 29/2011 is the first defendant in O.S. No. 28/2012. Further, the plaintiffs 1, 2 and 4 in the subsequent suit O.S. No. 28/2012 are the defendants 1 to 3 in O.S. No. 29/2011, the previously instituted suit. In the said circumstances, stay of the subsequent suit was sought till the final disposal of the previously instituted suit on the following grounds: "The subsequent suit was instituted while the trial in the previously instituted suit was in progress i.e., after the PW 1 was examined and the matter was coming for further evidence. The schedules of properties in both the suits are one and the same. Therefore, it is necessary to stay the subsequent suit pending final disposal of the previously instituted suit to avoid multiplicity of proceedings." The plaintiffs in the subsequent suit had filed a detailed counter resisting the request of the first defendant for stay of the subsequent suit by inter alia contending that the schedules of properties are different and that there is only one item of property in the previously instituted suit and whereas there are three items of property in the subsequent suit and that the boundaries of schedules of properties are totally different and that the parties to the suits are also different as there are some other parties as

defendants and plaintiffs in both the suits other than the common parties. The plaintiffs in the subsequent suit had further contended that the mere stay of the suit does not preclude the Court from entertaining and disposing of the interlocutory application and that the matters in issues in both the suits are different and that the requirements of the provision of law under Section 10 of the Code of Civil Procedure are not satisfied and hence, the petition is liable to be dismissed. However, the trial Court had allowed the application and granted stay of all further proceedings in the subsequent suit viz., O.S. No. 28/2012.

5. (b) In view of the facts and contentions, it is necessary to first refer to Section 10 of the Code of Civil Procedure, which reads as follows:

10. Stay of suit:-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 pendency 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.]

A careful reading of the provision of law would show that the Court shall not 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 the parties under whom they or any of them claim are litigating under the same title and where such suit is pending in the same or any other Court having jurisdiction. In the case on hand, a perusal of the plaints in both the suits would show that the previously instituted suit is filed by the first defendant in the subsequent suit against the plaintiffs 2 and 4 in the subsequent suit and two others. The subsequent suit was filed by the defendants 1 to 3 in the previously instituted suit and one R. Vijayalakshmi against the plaintiff in the said previously instituted suit and a Math. Thus, both the suits are not between the same parties though some of the parties are common. Further, in the previously instituted suit there is only one item of property in the schedule and the extent of the said property in Survey No. 15/1 is Ac. 1.69 cents; however, in the subsequent suit O.S. No. 28/2012 there are three items of property though in the same survey number. The total extent of the three items of property is Ac. 1.13 cents. The said extent is stated to be a part and parcel of the schedule of property in the previously instituted suit. However, it is contended that the boundaries mentioned in the schedule of the plaints do not ex facie support the said contention. In the previously instituted suit, the trial is in progress. Be that as it may, both the suits are now on the file of the same Court and both the suits are for perpetual injunction. One party i.e., the plaintiff in previously instituted suit, who is also the first defendant in the subsequent suit, is contending that the schedule of property in three items in the subsequent suit is a part and parcel of

the schedule of property in the previously instituted suit, which was filed by him. On the other hand, the plaintiffs in the subsequent suit contend that the properties are different. One suit is of the year 2011 and the other suit is of the year 2012. Both the suits are sufficiently old as on today. Therefore, it is considered just and proper to direct disposal of both the suits together/ simultaneously by conducting parallel trials so that all the issues can be finally thrashed out and further protraction of the litigation can be avoided and a quietus can be given to the lis once and for all at least at the stage of the trial Court. The aforementioned view of this Court finds support from the ratio in the decision in Sakina Bee and Others Vs. Venkat Swamy and Another, , which was rendered by following the precedential guidance in the decision in Cholanmandalam Investments and Finance Co. Pvt. Ltd. Vs. Radhika Synthetics and another, . Viewed thus, this Court finds that the impugned order brooks interference and is liable to be set aside.

6. In the result, the Civil Revision Petition is allowed and the impugned order is set aside with a direction to the trial Court to take up the subsequent suit O.S. No. 28/2012 also for trial simultaneously and together with the previously instituted suit O.S. No. 29/2011 and conduct parallel trials and dispose of both the suits together by following the procedure established by law. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this Civil Revision Petition shall stand closed.