

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

HONOURABLE SRI JUSTICE RAVI CHEEMALAPATI

CIVIL REVISION PETITION No.1261 of 2022

Between:

Penumatsa Suresh raju,

S/o Late Srirama raju, 50 years,

R/o Kallaluru village

Kalla Mandal, West Godavari District.

... PETITIONER

AND

Vegesna Atchayamma,

W/o Venkata raju, Aged about 70years,

R/o Kallaluru village

Kalla Mandal, West Godavari District and another.

... RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 24.03.2023

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE RAVI CHEEMALAPATI

1. Whether Reporters of Local Newspapers

May be allowed to see the order?

Yes/No

2. Whether the copy of order may be

Marked to Law Reporters/Journals?

Yes/No

3. Whether His Lordship wish to

See the fair copy of the order?

Yes/No

RAVI CHEEMALAPATI,J

***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

*** HONOURABLE SRI JUSTICE RAVI CHEEMALAPATI**

+ C.R.P.No. 1261 of 2022

% DATED: 24.03.2023

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... RESPONDENTS

! Counsel for petitioner : Sri Siva Nagarjun representing
Sri T V S Prabahakar Rao

^Counsel for Respondents : Sri E V S S Ravi Kumar for R1

<GIST :

>HEAD NOTE:

? Cases referred:

¹ AIR 1993 MADRAS 90

² (2005) 2 SCC 256

THE HON'BLE SRI JUSTICE RAVI CHEEMALAPATI**CIVIL REVISION PETITION NO.1261 OF 2022****ORDER:**

The present Civil Revision Petition is filed by the petitioner being aggrieved by the orders passed in I.A.No.30/2022 in O.S.No.361/2014 dated 09.05.2022 on the file of the learned Senior Civil Judge, Bhimavaram.

2. The petitioner herein is the defendant, the 1st respondent is the plaintiff and 2nd respondent is the 2nd defendant.

3. The 1st respondent/plaintiff filed suit vide O.S.No.361/2014 for declaration of title, recovery of possession and for recovery of Rs.100/-(Rupees hundred only) per month for unauthorized use and occupation. In the said suit, the petitioner filed present I.A.No.30/2022 under Section 10 of CPC, 1908 praying the Court to stay trial of the above suit till the disposal of the appeal in A.S.No.11/2018 arising out of previously instituted suit by plaintiff herein in O.S.No.431/2008 on the file of learned I additional Junior Civil Judge Court, Bhimavaram on the ground that both suits are between the same parties and the property and pleadings in both the suits are one and the same. The main issue involved is also

same including the schedule property, and the suit O.S.No.431/2008 was decreed on 22.01.2018 and aggrieved thereby an appeal vide A.S.No.11/2018 was preferred by the defendants and now in order to avoid simultaneous entertaining and adjudicating of both suits of two parallel litigation in respect of same cause of action, same subject matter and same relief in the present suit on the file of III Additional District Judge, Bhimavaram, which is pending consideration. Opposing the said application, plaintiff has filed his counter. After hearing the same, the Court below has dismissed the application. Aggrieved thereby, the present revision has been filed.

4. Heard Sri Siva Nagarjun, learned counsel representing Sri T V S Prabhakar Rao, learned counsel for petitioner and Sri E V S S Ravi Kumar, learned counsel for first respondent.

5. Learned counsel for the petitioner in elaboration to what has been raised in the grounds contended that, O.S.No.431/2008 has been filed by the plaintiff for declaration of title and recovery of possession which has been decreed on 22.01.2018, aggrieved by the same the defendants in the present suit preferred an appeal vide A.S.No.11/2008 which is pending consideration. Learned counsel for petitioner submitted that, pending consideration of the

said appeal, the plaintiff once again filed the present suit vide O.S.No.361/2014 for the very same relief between the same parties on the file of learned Senior Civil Judge, Bhimavaram. Learned counsel for the petitioner further contended that, in order to avoid simultaneous trying of two parallel suits despite being same matter in the issue, the present application I.A.No.30/2022 has been filed under Section 10 of CPC, 1908 and has drawn the attention of this Court to the said provision. Learned counsel for petitioner has also drawn the attention of this Court to the prayer sought in O.S.No.431/2008 and also to the prayer sought in O.S.No.361/2014 which are placed on record and submitted that, this case squarely falls within the contingencies that are required for consideration of Section 10 of CPC, 1908. He further submitted that, the Court below has erroneously dismissed the application on the ground that the relief sought in O.S.No.431/2008 is for declaration and for recovery of possession and whereas the present suit is filed for declaration, recovery of possession and also for payment of rents, as such Section 10 does not apply on the ground that the nature of the reliefs are different in both the suits. Learned counsel for the petitioner in support of his contentions relied on the judgment of

Madras High Court in ***Radhika Konel Paresh Vs Konel Parekh***¹.

The relevant portion reads as follows:

"..22. It is not in dispute that the child is below five years. Ordinarily thus the custody has to be with the mother. The mother has accordingly prayed for a decree for such a custody in the Family Court at Bombay. The father, who is the respondent can have every say and thus can say to the Court that the child's custody with the mother may not be in the interest of the child. We are constrained to observe that the suit that has been filed in this Court by the respondent has brought in substantially the same questions of fact with respect to the custody of [he child which have to be decided by the Family Court. We are not, therefore, in agreement with the view expressed by the learned single Judge that the questions involved in O.P. No. 694 of 1991 in this Court and the proceedings in the Family Court cannot be the same although there may be a little overlapping in the matter of evidence to be adduced in both.

24. In the result both the appeals are allowed and the impugned orders are set aside. Application No. 69 of 1992 is allowed and O.P. No. 694 of 1991 is stayed until the disposal of the suit in the Family Court at Bombay, viz., M. J. Petition No. A- 1744 of 1991. In so far as the relief as to the custody of the child is concerned Application No. 6404 of 1991 is dismissed. In the facts and circumstances of the case, there shall be no order as to costs.."

6. Learned counsel for the petitioner further submitted that, the petitioner has rightly filed the application but the same was dismissed erroneously by the Court below. As such, prayed to consider the revision.

7. On the other hand, learned counsel for 1st respondent contended that, O.S.No.431/2008 has been filed not only for

¹ AIR 1993 MADRAS 90

declaration of title and recovery of possession, but also for damages whereas the present suit O.S.No.361/2014 is concerned, it is for declaration of title, for recovery of possession but also includes payment of one hundred rupees(Rs.100/-) per month for their unauthorized use and occupation of plaint schedule property from the date of suit till the possession the property is delivered to the plaintiff and as such, the petitioner cannot say that this case falls squarely under Section 10 of CPC, 1908. He further submitted that, the said fact was duly taken into consideration by the Court below and has rightly dismissed the application. As such, prayed to dismiss the revision.

8. Perused the record.

9. The 1st respondent herein filed earlier suit O.S.No.431/2008 for the following relief:

- a) For declaration of title and recovery of vacant possession of plaint schedule property to the plaintiff after ejecting the defendants there from within stipulated time as fixed by this Hon'ble Court,*
- b) To award Rs.14,400/- payable by defendants to the plaintiff towards damages for use and occupation of the plaint schedule property,*

- c) To grant cost of the suit, and*
- d) To grant such other reliefs.*

Similarly the 1st respondent also filed the present suit vide O.S.No.361/2014 for the following relief:

"...10.(a) declaring that the plaintiff is the absolute owner to the plaint schedule property by virtue of the registered sale deed dated 11.08.1968 and consequentially directing both the defendants to vacate from the plaint schedule property and to deliver its vacant possession to the plaintiff within the time to be stipulated by the Honourable Court, and within the said time if the defendants did not do so permitting the plaintiff to take the physical possession of the plaint schedule property by following due process of law with the costs of the defendants;

(b) directing the defendants to pay Rs.100/- per month for their unauthorized use and occupation of the plaint schedule property from the date of the suit till the date on which the plaintiff is put in physical possession of the plaint schedule property;

(c) directing the defendants to pay the plaintiff the costs of the suit, and;

(d) granting such other reliefs to which the plaintiff is entitled to under the circumstances of the case"

10. The suit O.S.No.431/2008 was decreed on 22.01.2018 by learned I Additional Junior Civil Judge, Bhimavaram declaring the plaintiff as owner of the plaint schedule property. Aggrieved by the same, the petitioner being defendant filed an appeal vide AS.No.11/2018 before III Additional District Judge, Bhimavaram along with 2nd respondent herein & others which is pending consideration. It is brought to the notice of this Court the schedules of the two suits. The said schedules are extracted hereunder.

Schedule in O.S.No.431/2008:

"An extent of 198 sq.yards of site therein two terraced buildings Old D.No.223,situated at kallakuru village, Kalla Mandal, Akidvidu Sub-Registrar, W.G.Dt is bounded by:

East : Joint lane, at present vacant site of deceased 1st defendant.

South: Street.

West: Joint wall of Vegesna Ramachandra Raju to some extent, site to some extent and wall to some extent, at present buildings of P.Krishnam Raju.

North: Street."

Schedule in O.S.No.361/2014:

"An extent of 198 sq.yards of site therein two terraced buildings Old D.No.223, situated at kallakuru village, Kalla Mandal, Akidvidu Sub-Registrar, W.G.Dt is bounded by:

East : Joint lane, at present vacant site of defendants.

South: Street.

West: *Joint wall of Vegesna Ramachandra Raju to some extent, site to some extent and wall to some extent, at present building of Penmetsa Krishnam Raju.*

North: *Street.”*

11. As could be seen, the relief sought in both the suits and the schedule and the parties are one and the same, the petitioner has rightly filed application under Section 10 of CPC, 1908 for the reasons stated *supra*.

12. Section 10 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] have jurisdiction to grant the relief claimed, or in any Court beyond the limits of [India] established or continued by Central Government and having like jurisdiction, or before the Supreme Court.”

13. In ***National institute of mental health & neuro sciences***

Vs C.Parameswara², the Apex Court holds as follows:

“..8. The object underlying Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the civil court and it cannot apply to proceedings of other nature instituted under any other statute. The object of

² (2005) 2 SCC 256

Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject-matter in both the suits is identical. The key words in Section 10 are “the matter in issue is directly and substantially in issue” in the previous instituted suit. The words “directly and substantially in issue” are used in contradistinction to the words “incidentally or collaterally in issue”. Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject-matter in both the proceedings is identical.”

14. The provision and principles laid down by the Apex Court in the judgment referred *supra* can be taken into consideration, as the same is squarely applicable to facts of the case on hand. The Court below without considering the purport of Section 10 of CPC, 1908 has simply dismissed the application on the sole ground that the petitioner also claimed the rents in the present suit, despite that fact that the main relief sought and the parties in both the suits are one and the same. Those aspects were not dealt by the Court below, as such, this Court holds that the order impugned is erroneous and this Court is of the considered view that the petitioner has made out a case to consider the revision. Accordingly, civil revision petition is allowed, thereby the suit vide O.S.No.361/2014 is hereby stayed, pending disposal of Appeal AS.No.11/2008 on the file of III additional district Judge, Bhimavaram.

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Accordingly, the civil revision petition is **allowed**. No costs.

Miscellaneous applications, pending if any, shall stand closed.

JUSTICE RAVI CHEEMALAPATI

24.03.2023

Note: LR copy to be marked

B/o

BRS