

Regular Civil Suit No. 14/2015

Darshana Vs. Ramesh

Order passed below Exh. No.48

This application is filed on behalf of defendant No. 2 for stay of suit till the decision of Regular Criminal Case No. 26/2016. The application is resisted by plaintiff by say vide Exh. 49.

2. It is contended by defendant No. 2 that suit is filed for declaration that sale deed dated 27/04/2011 executed by defendant no. 2 in favour of defendant no 1 is not binding on plaintiff's share. Plaintiff contented that defendant no. 2 prepared false and bogus POA of plaintiff's father late Shantaram with the help of defendant no. 3 and sold suit property Gat No. 647 in favour of defendant no. 1. Plaintiff has filed criminal complaint against defendant no. 2 and 3 for offence punishable under section 420, 467, 468 r/w. 34 of I.P.C. and accordingly police made investigation and filed charge-sheet against defendant no. 2 and 3 bearing R.C.C.No. 26/2016. In the same criminal case plaintiff no. 1 is a complainant and other plaintiffs are witnesses. The report in the criminal case is identical with the contentions raised in the plaint. In both the proceedings the issue of whether POA is false and bogus is involved. If the suit is proceeded and concluded prior to criminal case, it will become very difficult for defendant to defend the suit and prejudice would be caused to defendant no. 2 and 3. Hence defendant no. 2 prayed for stay of the suit till the decision of R.C.C. 26/2016.

3. Plaintiff contended that the application putforth by defendant no. 2 is not bonafide. Criminal case and Civil suit pending between the parties are distinct and separate thing and issue involved in it can not be

associated with each other. Criminal case would proceed on the principle of proof beyond reasonable doubt and the civil suit would proceed on the principle of preponderance of probabilities. This application is nothing but escape route from civil suit. There is no reason to stay civil suit. If defendant no. 2 desires, he can file application to stay criminal proceeding. The decision of civil suit would render no effect on criminal case. Defendant no. 2 filed said application to cause delay. Hence she prayed for rejection of application.

4. In support of his contention defendant no. 2 relied upon the case of M.S.Sheriff Vs. State of Madras AIR 1954 SC 397. Five judges bench of the Hon'ble Apex Court held that, as between the civil and the criminal proceedings the criminal matters should be given precedence. No hard and fast rule can be laid down but the possibility of conflicting decisions in the civil and criminal Courts is not a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the other or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration is the likelihood of embarrassment. Another factor which weighs with the Court is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. It has been further held that the public interests demand that criminal justice should be swift and sure that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust. This, however is not a hard and fast rule. Special considerations obtaining in any particular case might make some other course more expedient and

just. For example, the civil case or the other criminal proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to prosecution ordered under S. 476. The simultaneous prosecution of the present criminal proceedings and the civil suits will embarrass the accused and that the civil suits should be stayed till the criminal proceedings have finished.

5. In the context of supra ruling the rule of law demands that civil suit should be stayed till the decision of criminal case, as in the both the proceedings the issue of preparation of false and bogus POA is involved. Though it is not hard and fast rule, conclusion of civil trial prior to criminal case would cause prejudice to defendant no. 2, creating difficulty to him for raising defence in civil suit. The observations of the supra ruling are squarely applicable to defendant no. 2.

6. In order to avoid conflicting findings on issues in both the proceedings the civil suit needs to be stayed till the decision of criminal case bearing R.C.C.No. 26/2016. Hence I pass the following order.

ORDER

1. Application is allowed
2. This suit is stayed till the decision of R.C.C.No. 26/2016.

Date : 29/03/2019.

(Salim A. Jamadar)
Civil Judge J.D. Kankavali.