

THE HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.5128 of 2014

ORDER:

A Third party to O.S.No.174 of 2009 on the file of the Senior Civil Judge, Peddapalli, Karimnagar District is the petitioner in the present revision filed under Article 227 of Constitution of India.

Heard Sri Venkateshwar Varanasi, learned counsel for the petitioner and Sri M. Ram Mohan Reddy, learned counsel for the respondents apart from perusing the material available before the Court.

The first respondent herein instituted O.S.No.174 of 2009 against the respondents 2 and 3 herein for declaration that she is the absolute owner of the plaint schedule property and also for perpetual injunction to restrain the defendants from opening the locker. The defendant No.1/respondent No.2 herein filed written statement, resisting the said suit. In the said suit the petitioner herein filed the present I.A.No.409 of 2010 under the provisions of Order 1 Rule 10 (2) r/w.151 of the Code of Civil Procedure and Rule 28 of the Civil Rules of Practice seeking her impleadment as defendant No.3. Plaintiff and first defendant filed counters, resisting the said application. The learned Senior Civil Judge, Peddapalli by way of an order, dated 30-10-2014 dismissed the said application filed by the petitioner herein. The said order is under challenge in the present revision.

It is contended by the learned counsel for the petitioner that the order under challenge is erroneous, contrary to law and is opposed to the very spirit and object of provisions of Order 1 Rule 10 (2) of the Code of Civil Procedure. It is further contended that had the contents of the affidavit filed in support of the application been considered by the learned Senior Civil Judge from proper perspective, the order under revision would not have emanated. It is also submitted by the learned counsel that the reason assigned by the Court below

for dismissal of the application is not a valid one as O.P.No.64 of 2004 filed by the first defendant was dismissed for default by the Court of Judge, Family Court at Hyderabad on 18-07-2012. It is further submitted that the learned Judge grossly erred in dismissing the present application without taking up I.A.No.786 of 2012 filed by the petitioner herein to receive the documents.

On the contrary, it is submitted by the learned counsel for the respondents that the order passed by the Court below is in accordance with the provisions of Order 1 Rule 10 (2) of the Code of Civil Procedure and there is no illegality nor any perversity in the order passed by the Court below as such the present revision is not maintainable under Article 227 of the Constitution of India. It is further submitted that the petitioner herein is neither a proper nor a necessary party for the issue in the suit. It is also submitted by the learned counsel for the respondents that since the Court below assigned valid and convincing reasons for arriving at the conclusions, the order impugned is not amenable for any correction by this Court under Article 227 of the Constitution of India.

In the above background now the issue, which this Court is called upon to answer in the present revision, is:

Whether the order passed by the Court below, which is impugned in the present revision is in accordance with law ?

Evidently, the very basis for refusing to grant relief in favour of the plaintiff is the alleged cessation of marriage tie between the petitioner and the second respondent by way of decree of divorce without adverting to other aspects of the matter. The material placed on record by the petitioner herein manifestly discloses that the *ex parte* decree obtained by the second respondent was subsequently set aside by the Court of the Judge, Family Court on the application made by the petitioner under Order 9 Rule 13 of the Code of Civil Procedure. It is noteworthy that the Court of the Judge, Family Court at Hyderabad subsequently by way of an order, dated 18-07-2012 dismissed O.P.No.64 of 2004 filed by the first defendant herein for default. It is also

significant to note that in fact the petitioner herein also filed I.A.No.786 of 2012 before the Court below under the provisions of Order 8 Rule 1 (A) (3) Of Code of Civil Procedure, seeking leave of the Court to file as many as 16 documents including the orders passed by the Family Court.

Having regard to the facts and circumstances and in the considered view of the Court the said document petition ought to have been considered by the Court below along with the present I.A. filed under Order 1 Rule 10 (2) of the Code of Civil Procedure so that a just and reasonable conclusion could be arrived at instead of rendering the document petition infructuous. This Court does not find any justification on the part of the Court below to pass orders only on the petition filed under Order 1 Rule 10 (2) of the Code of Civil Procedure instead of considering the document petition also along with the present application. In view of the same, this Court is of the opinion that it is a case, which requires remand of the present application for fresh consideration along with I.A.No.786 of 2012 filed for receiving the documents.

For the aforesaid reasons, the Civil Revision Petition is allowed, setting aside the order, dated 30-10-2014 passed by the Court of Senior Civil Judge, Peddapalli and consequently I.A.No.409 of 2010 stands restored to file and same is remanded to the Court below for fresh consideration along with I.A.No.786 of 2012, on merits, un-influenced by any of the observations made in the impugned order or in the present order, within a period of two (2) months from the date of receipt of a copy of this order. There shall be no order as to costs.

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

A.V. SESA SAI, J

March 25, 2015

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