

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.3438 of 2014

ORDER:

Heard Sri V.Jagapathi, learned counsel for the petitioner and Sri A.Chandraiah Naidu, learned counsel for respondent No.2.

2. This Revision Petition is filed challenging the order dt.14-08-2014 in I.A.No.185 of 2014 in O.S.No.654 of 2009 of the Principal Junior Civil Judge, Tirupati, Chittoor District.

3. The said suit was filed by 1st respondent against 2nd respondent for a perpetual injunction restraining 2nd respondent from interfering with the alleged possession and enjoyment of 1st respondent in respect of the plaint schedule property. Subsequently, in the said suit, the petitioner herein has been impleaded since he claimed to be the owner of the plaint schedule property and disputed the right of 2nd respondent as owner of the property. The said application for impleadment was allowed on 24-04-2014 vide order in I.A.No.776 of 2012. Thereafter, the respondent Nos.1 and 2 appears to have entered into a compromise on 20-06-2014. However, in the meantime, rents amounting to Rs.4,20,000/- appear to

have been deposited in the Court below by 1st respondent.

4. To withdraw the said amount, I.A.No.185 of 2014 was filed by 2nd respondent. This was objected to by the petitioner.

5. The Court below by the order dt.14-08-2014 allowed the said I.A. and directed issuance of the cheque for the said amount in favour of 2nd respondent. It held that the amount deposited would either belong to 1st respondent who deposited it as rent or to 2nd respondent who claimed to be the landlord; that the petitioner, if he had any right, should file a separate suit, particularly, when 1st respondent reported no objection to give the amount to 2nd respondent and also because 2nd respondent was originally shown as defendant in the suit.

6. Questioning the same, this Revision Petition is filed.

7. Learned counsel for the petitioner contended that in respect of the same property previously O.S.No.421 of 2003 had been filed by him against 2nd respondent and others which was decreed on 12-10-2004 and on the basis of decree in the said suit only, he was impleaded as a party in the present suit to avoid multiplicity of litigation; and therefore once he is impleaded

as a party in the suit, the *inter se* title dispute between himself and 2nd respondent ought to be decided by the Court and only after such decision, the successful party should be allowed to withdraw the said money.

8. Learned counsel for 2nd respondent on the other hand contended that the decree in O.S.No.421 of 2003 does not relate to the said property at all but to a different property; that it is an *ex parte* decree and applications to set aside the said decree are pending; it is not as if the title of the petitioner had been upheld finally by any Court; and therefore the petitioner cannot claim the said amount.

9. I have noted the submissions of both sides.

10. The petitioner had filed O.S.No.421 of 2003 against 2nd respondent and two others for delivery allegedly of part of suit schedule property; it was decreed; and he had been impleaded as a party in the present suit on the said ground only vide order dt.24-04-2014 in I.A.No.776 of 2012 although in that order no finding was given as to identity of property in that suit and the present suit. The order of impleadment of the petitioner which was passed on 24-04-2014 had not been challenged by either of the respondents and has therefore attained finality. The issue in the suit is also whether as between the petitioner and 2nd respondent, which of them

have title to the property. While deciding the said issue, the Court in any way must look into the question whether the judgment in O.S.No.421 of 2003 dt.12-10-2004 operates as *res judicata* or not and whether the property which is subject matter of that suit is same as property which is subject matter of the present suit.

11. Therefore, it is not proper to allow 2nd respondent to withdraw the amount deposited by 1st respondent without the above issue in the suit being decided either way.

12. I do not agree with the observation of the Court below that notwithstanding the fact that the petitioner had been impleaded in the suit, he should file a separate suit to determine whether he is entitled to take the money and that 1st respondent and 2nd respondent can mutually agree that 2nd respondent can withdraw the said amount. This, in my considered view, is perverse. Having impleaded the petitioner in the present suit on the ground that it would avoid multiplicity of litigation, it cannot now insist that the petitioner should file a separate suit to determine the issue of title to the property.

13. Therefore, the impugned order dt.14-08-2014 in I.A.No.185 of 2014 in O.S.No.654 of 2009 of the Principal Junior Civil Judge, Tirupati, Chittoor District, cannot be sustained and is accordingly set aside. The

Court below shall decide the issue about the *inter se* title of the petitioner and 2nd respondent and depending upon the said decision, allow the successful party to withdraw the sum of Rs.4,20,000/- lying to the credit of the suit.

14. The Civil Revision Petition is allowed with the above directions. No costs.

15. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 01-07-2015

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