

HON'BLE SRI JUSTICE R. SUBHASH REDDY

CIVIL REVISION PETITION Nos.3703, 3997 and 3995 of 2014

COMMON ORDER :

Since the issue involved in these civil revision petitions is inter-related and the parties are also one and the same, with the consent of both the learned counsel, they are heard together and being disposed of by this common order.

2. These Civil Revision Petitions, under Article 227 of the Constitution of India, are filed by the petitioner/defendant aggrieved by the orders and decrees dated 03.09.2014 in I.A.Nos.1103, 1093 and 1098 of 2013 in O.S.No.290 of 2009 passed by the Principal Senior Civil Judge, Gudivada, Krishna District, allowing the applications filed by the respondent/plaintiff i.e., (i) I.A.No.1103 of 2013 filed under Order 1, Rule 10 and Section 151 of C.P.C., to add Smt. G. Venkataravanamma as 2nd defendant to the suit proceedings; (ii) I.A.No.1093 of 2013 filed under Order 7, Rule 14 and Section 151 of C.P.C., to grant permission for the petitioner to file certain documents into the Court to mark them as exhibits on plaintiff side; and (iii) I.A.No.1098 of 2013 filed under Section 151 of C.P.C., to reopen the main suit for the purpose of impleading and also marking documents.

3. The respondent/plaintiff filed the aforesaid suit initially against the petitioner/defendant alone for partition and separate possession of the suit schedule properties. After completing the trial, the matter was posted for judgment. At that stage, the respondent/plaintiff has filed three applications viz., I.A.Nos.1103, 1093 and 1098 of 2013 in O.S.No.290 of 2009 for the aforesaid reliefs. The petitioner/defendant filed counter affidavit opposing the said applications, stating that the said applications are not maintainable at the stage of judgment and if the applications are allowed, it would result in changing the nature of

the suit and much prejudice will be caused to him. The Court below, after considering the material and the evidence on record, passed impugned orders dated 3.9.2014 only on the ground that the proposed party is called absent and set exparte, and consequently allowed the other two applications. Aggrieved by the said orders, the present civil revision petitions are filed.

4. Having heard learned counsel for the parties, I have perused the impugned orders and the material on record.

5. Although it is contended by the learned counsel for respondent/plaintiff that the proposed party/2nd defendant is a co-parcenor and necessary party to the suit proceedings, a perusal of the impugned orders shows that no reasons are assigned by the Court below to allow the said applications and exparte orders are passed merely on the ground that the proposed party is not present.

6. As the suit is filed for partition of the suit schedule properties and all the parties stand in the same footing, the Court below ought to have considered the defence put-forth by the petitioner/defendant in his counter affidavits, copies of which are placed on record, before passing the impugned orders. As the impugned orders are passed without assigning valid reasons and without considering the plea taken by the petitioner/defendant in the counters, I deem it appropriate to set aside the impugned orders and remand the matter to the Court below for fresh consideration.

7. Accordingly, these civil revision petitions are allowed, setting aside the impugned orders dated 3.9.2014 and the matter is remanded to the learned Principal Senior Civil Judge, Gudivada, Krishna District, to consider the applications afresh and pass appropriate orders in accordance with law, after giving an opportunity of hearing to all the parties. As a sequel, miscellaneous petitions pending, if any, in these revisions shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

02.04.2015.

Msr

HON'BLE SRI JUSTICE R.SUBHASH REDDY

-

CIVIL REVISION PETITION Nos.3703, 3997 and 3995 of 2014

02.04.2015

Msr