

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

CIVIL REVISION PETITION No.2340 OF 2015

Between:

Machem Venkata Sesha Ram Prasad and another.
.. Petitioners

and

Ambadi Mastan Rao and another
.. Respondents

DATE OF JUDGMENT PRONOUNCEMENT : 11th AUGUST,
2015

SUBMITTED FOR APPROVAL:

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THE HON’BLE SRI JUSTICE SANJAY KUMAR

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| 1. | Whether Reporters of Local newspapers may be allowed to see the judgment? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. | Whether Their Lordship wishes to see the fair copy of the judgment? | Yes/No |

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.2340 OF 2015

ORDER

This civil revision petition under Article 227 of the Constitution arises out of the order dated 08.04.2015 passed by the learned Senior Civil Judge, Narsapuram, West Godavari District, in I.A.No.648 of 2012 in O.S.No.67 of 2008. The said I.A. was filed by the petitioners herein, being third parties to the suit, under Order 1 Rule 10(2) CPC seeking to be added as defendants 2 and 3 in the suit. By the order under revision, the trial Court dismissed the I.A. Hence, this civil revision petition.

By order dated 24.06.2015, this Court granted interim stay of further proceedings in the suit taking note of the submission made by the learned counsel for the petitioners that the property which was the subject matter of the suit was claimed to be joint family property but no issue had been framed by the trial Court as regards its status.

The suit, O.S.No.67 of 2008, was filed by the first respondent herein based on the possessory agreement of sale dated 12.06.2005 said to have been executed by the second respondent, the father of the petitioners. According to the first respondent, the property which was the subject matter of the said agreement of sale was the self-acquired property of the second respondent whereas the petitioners, by way of the subject IA, claimed that it was joint family property in which they had rightful shares. The trial Court was of the opinion that adding the petitioners herein as parties to the suit would convert the nature of the specific performance suit into a suit for title and held that the petitioners

could not be impleaded as parties. The trial Court therefore dismissed their implead petition holding that if they had any right over the suit schedule property, they could workout their remedies in accordance with law.

Heard Sri SVR Subrahmanyam, learned counsel for the petitioners, and Sri Dasari SVSV Prasad, learned counsel for the first respondent.

In ***KASTURI V/s. IYYAMPERUMAL***^[1], the Supreme Court, while considering an implead petition filed in a suit for specific performance of an agreement of sale, observed that two tests are to be satisfied for determining the question as to who would be a necessary party to such a suit– 1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings and 2) no effective decree can be passed in the absence of such party. Applying these tests, the Supreme Court held that the guiding principle would be that the presence of such party is necessary to adjudicate the controversies involved in the suit for specific performance. The Supreme Court further held that necessary parties would be those persons in whose absence no decree can be passed by the Court while proper parties are those whose presence before the Court would be necessary to enable it to effectually and completely adjudicate upon and settle all the questions raised in the suit, although no relief is claimed against such persons in the suit.

Again, in ***MUMBAI INTERNATIONAL AIRPORT (P) LTD. V/s. REGENCY CONVENTION CENTRE & HOTELS PVT. LTD.***^[2], the Supreme Court, while applying the law laid down by it in ***KASTURI***¹, opined that in the event a co-owner of a property entered into an agreement of sale representing that he had a particular share and the other co-owner sought to come on record in the suit filed for specific performance of the said agreement claiming that the vendor had a lesser share than that claimed by him, he would be entitled to be impleaded as

a proper party as the issue whether the plaintiff was entitled to specific performance of the agreement in respect of the share claimed by the vendor or the share claimed by the other co-owner can be decided. The Supreme Court clarified that judicial discretion rests with the court to implead or not to implead the proposed party depending upon the facts and circumstances of the individual case.

Applying the law laid down by the Supreme Court, a learned Judge of this Court in ***KIRAN KRISHNA REAL ESTATES & CONSTRUCTIONS (P) LTD. V/s. SIDDIPETA RANGA REDDY***^[3], upheld the order passed by the trial Court in that case permitting the impleadment of a person claiming to have half a share in the suit land, alleged to be joint family property, and as the agreement of sale in respect of the land, which went beyond the share of the vendor, would affect his rights.

In the case on hand, the claim of the petitioners was that they had undivided shares in the property which was the subject matter of the possessory agreement of sale, specific performance of which was sought by the first respondent. No doubt, the application seems to have been filed belatedly as recording of the evidence of the parties had already concluded. However, the trial Court itself pointed out that it would be open to the petitioners to separately workout their remedies in accordance with law if they had any rights in the suit schedule property. Consequently, the adjudication by the trial Court in the suit would ultimately not be effectual and complete as the petitioners herein could raise the very plea that they are raising now at a later point of time and stall the decree, if any, passed in the subject suit. It would therefore be in the interest of all the parties concerned and more particularly, the first respondent/plaintiff, to have the claim put forth by the petitioners to contest during the suit proceedings itself. The approach of the trial Court in rejecting the I.A. was therefore shortsighted as it lost sight of this aspect of the matter. However, keeping in view the delay on the part of the petitioners in coming forward, necessary conditions have to be

imposed for their impleadment at this late stage.

The CRP is accordingly allowed permitting the petitioners herein to come on record in O.S.No.67 of 2008 as defendants 2 and 3. The order under revision holding to the contrary is consequently set aside. It shall however not be open to the petitioners herein, upon their impleadment in the suit, to seek reopening of the evidence by recalling the witnesses already examined. They shall only adduce their own evidence in support of their claim that the suit property is joint and that they have undivided shares therein. The petitioners shall complete their evidence within four months from the date of their impleadment in the suit and shall not be allowed to protract the suit proceedings beyond the said period. Subject to the afore-stated conditions, the trial Court may proceed with the matter in accordance with law. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

11th AUGUST, 2015
PGS

[\[1\]](#) (2005) 6 SCC 733

[\[2\]](#) 2010 (5) ALD 24 (SC)

[\[3\]](#) 2011 (3) ALD 739