

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION No.2571 of 2014

ORDER:

Heard the learned counsel for petitioner and the learned counsel for respondents.

2. The petitioner herein is a proposed party who wants to get impleaded in O.S.No.16 of 2009 on the file of the Court of Additional District Judge, Chittoor (for short, trial Court), filed by respondents 1 and 2 herein. The petitioner filed I.A.No.389 of 2012 stating that his father was the eldest brother of the first defendant and he was not given any share in the property left by his grandfather. He further stated that his father purchased a house site under a registered sale deed dated 17.09.1969 out of his own earnings and died on 19.12.2007. He also stated that after the death of his father, he succeeded to the said property and it was included in the suit schedule properties as item No.2 of A schedule property. A counter-affidavit was filed by the plaintiffs (respondents 1 and 2 herein) challenging the title of the petitioner herein to the said property and stating that if the petitioner wants to claim any right, he is at liberty to file a separate suit for declaration of his title. They further stated that they have been in continuous possession of the property for the last more than 45 years and the petitioner and his father did not raise any objection while constructing a rice mill by the joint family of the respondents. They also stated that after the death of the father of the petitioner on 19.12.2007, there are other family members in his family who are also having a share in the property left by him.

3. The trial Court went into the facts of the case and *prima facie* recorded findings on the claim made by the petitioner and ultimately dismissed his application, by its order dated 06.03.2014, saying that that the petitioner can file a separate suit for declaration and he can also file a comprehensive suit for partition by including all the properties of his

father, by holding as follows:

“13. The suit is filed for partition of the properties allotted to the 1st defendant. The daughters of 1st defendant had filed suit for partition of these properties. The petitioner if really intended to seek for partition of the joint family properties, he is at liberty to file separate suit for declaration of his right over item No.2 of the plaint schedule or for partition of entire joint family properties. The question arise here as to why the properties of the petitioner’s father are not included for claiming partition of the properties. That is the question to be answered by the petitioner himself. But here it is pertinent to note that the petitioner has come forward to create litigation by filing of this partition. However, the petitioner is at liberty to file separate suit for declaration of his right over the particular property and he can as well file a comprehensive suit for partition by including all the properties of his father also if the petitioner is really intended to say that his father is still continued as member of the joint family. The learned counsel for the petitioner during the course of arguments had contended that the petitioner is claiming share in these properties as they are joint family properties. But the petitioner is forgetting that these properties are allotted to the share of the 1st defendant. Even as per the contention of the 1st defendant joint family properties were partitioned as long back as in the year 1968. Therefore, these properties alone are not joint family properties as claimed by the petitioner. By considering the claim of the petitioner, this court clearly found that the petitioner is neither a proper party nor a necessary party to the present suit as it cannot be even said that without the presence of the petitioner the suit cannot decided effectively. Accordingly the point is answered.”

Challenging the said order, the present Civil Revision Petition is filed.

4. The only point that should have been considered by the trial Court is whether the petitioner is a necessary or proper party to the proceedings in a suit for partition. The Supreme Court in **Rangammal v.**

Kuppuswami and another^[1], held as follows:

“It hardly needs to be highlighted that in a suit for partition, it is expected of the plaintiff to include only those properties for partition to which the family has clear title and unambiguously belong to the members of the joint family which is sought to be partitioned and if someone else’s property meaning thereby

disputed property is included in the schedule of the suit for partition, and the same is contested by a third party who is allowed to be impleaded by order of the trial Court, obviously it is the plaintiff who will have to first of all discharge the burden of proof for establishing that the disputed property belongs to the joint family which should be partitioned excluding someone who claims that some portion of the joint family property did not belong to the plaintiff's joint family in regard to which decree for partition is sought."

5. In view of the said authoritative pronouncement of the Supreme Court, it cannot be held that the petitioner is not a proper party to the proceedings. The rights of the petitioner in the property to be partitioned would be decided after conclusion of trial, but not at this stage. It is also open to respondents 1 and 2 herein to file a rejoinder to the claim made by the petitioner and appropriate issues can be framed in the suit.

6. In the circumstances, the impugned order of the trial Court in I.A.No.389 of 2012 in O.S.No.16 of 2009 dated 06.03.2014 is set aside and I.A.No.389 of 2012 is allowed. Consequently, the Civil Revision Petition is allowed. No order as to costs. Miscellaneous Petitions, if any pending, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 01.12.2015
TJMR

[\[1\]](#) AIR 2011 SC 2344