

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

CRP. No.490 of 2015

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.12.06.2014 in I.A.No.975 of 2012 in O.S.No.284 of 2007 of the IX Additional District Judge, Visakhapatnam.

2. The petitioners herein are the defendants 2, 4 and 5 in the above suit. The respondents 1 and 2 herein filed the said suit for partition of the plaint schedule property into three equal shares and for allotment of one such share to them.

3. Along with the suit, the respondents 1 and 2 filed I.A.No.1334 of 2007 for a temporary injunction restraining the petitioners and other defendants from alienating the suit schedule property.

4. On 14.09.2007 a status quo order was passed in the said application and the said order was extended on 10.03.2008 till further orders.

5. Alleging that the petitioners in violation of the said orders, sold away two plots of land forming part of the suit 'A' schedule to the 7th respondent and another person, and that the 7th respondent was digging foundations in the said land and trying to construct a building as well as a bore well therein, the respondents 1 and 2 filed I.A.No.975 of 2012 to implead 7th respondent as 8th defendant in the suit.

6. It is their contention that without there being any partition of the plaint schedule properties, the petitioners cannot sell any part of the 'A' schedule property to the 7th respondent and she cannot get any title to the plot which she has purchased and therefore she cannot make any constructions therein.

7. Counter affidavit was filed by the 1st petitioner opposing this application taking the stand that there was a partition in the joint family long back and the properties were enjoyed individually. It was also pointed out that respondents 1 and 2 had also sold out their properties to third parties earlier. A stand was also taken that the transactions entered into by the petitioners were in relation to properties which do not form part of the plaint schedule.

8. By order dt.12.06.2014 the said I.A. was allowed by the Court below. It held that the presence of 7th respondent is necessary to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit to avoid multiplicity of proceedings. It also held that if the proposed party is added as 8th defendant, no prejudice would be caused to the petitioners.

9. Challenging the same, this Revision is filed.

10. Heard Sri V.S.R.Anjaneyulu, Counsel for the petitioners and Sri V.V.N.Narayana Rao, counsel for respondents 1 and 2.

11. From the facts narrated above, it is clear that the respondents 1 and 2 have filed a suit for partition and had obtained an order of status quo in I.A.No.1334 of 2007 restraining the petitioners from alienating the suit schedule properties in favour of third parties pending disposal of the suit.

12. While the respondents 1 and 2 would contend that the said order has been violated by the petitioners by selling a plot to the 7th respondent herein, the petitioners would deny the same and contend that the said alienation is in respect of the property which is not part of the plaint schedule.

13. The question whether the property purchased by the 7th respondent forms part of plaint 'A' schedule and whether the petitioners have violated the order granted in I.A.No.1334 of 2007, is a matter to be gone into by the court below.

14. In my considered opinion, since the alleged alienation in favour of the 7th respondent occurred pending suit, it would be in the interest of the 7th respondent to participate in the suit and protect her interest in the event it is found that the said alienation in her favour is in respect of a portion of the plaint 'A' schedule property.

15. Admittedly notice to the 7th respondent in I.A.No.975 of 2012 has been served in the Court below, but she did not choose to contest said I.A. and she has also not questioned the order passed by the Court below impleading her as 8th defendant in the suit.

16. When the respondents 1 and 2 who are the plaintiffs in O.S.No.284 of 2007 being the *dominas litus* wish to implead the 7th respondent in order to make the judgment in the suit binding on the 7th respondent as well, and when the 7th respondent does not seem to have any objection to such impleadment, I am of the opinion that the petitioners, who are defendants 2, 4 and 5, cannot be said to be aggrieved by the said impleadment.

17. In this view of the matter, I do not find any error or infirmity in the order passed by the Court below impleading the 7th respondent as 8th defendant in the suit.

18. Accordingly, this Civil Revision Petition is dismissed. However, having regard to the fact that the suit is of the year 2007, the Court below is directed to expeditiously dispose of the suit, preferably within a period of six (06) months from the date of receipt of a copy of this order. There shall be no order as to costs.

19. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

28th October, 2015

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