

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.3904 of 2015

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.04.09.2015 in I.A.No.213 of 2008 in O.S.No.12 of 2003 on the file of the Senior Civil Judge, Mahabubabad.

2. The petitioner herein is a third-party to the said suit.

3. The respondent nos.1 to 3 filed the said suit against 4th respondent for recovery of money on the basis of a registered mortgage deed dt.07.04.2000 allegedly executed by 4th respondent in their favour.

4. The petitioner is none other than the son of 4th respondent. The petitioner claims that he has filed O.S.No.7 of 2001 on the file of the II Additional District Judge, Warangal for partition of the suit schedule property therein including the property in respect of which the mortgage was executed by 4th respondent in favour of respondent nos.1 to 3. He contends that the 4th respondent is not the exclusive owner of the property which is subject matter of O.S.No.12 of 2003; that she has title only to a portion of the said property, if at all; the said

property is, in fact, joint family property; and if the suit O.S.No.12 of 2003 is decreed, then any share therein which he may get in the property which is subject matter of O.S.No.12 of 2003 would be lost. He, therefore, filed I.A.No.213 of 2008 to get himself impleaded in O.S.No.12 of 2003.

5. This application was opposed by respondent nos.1 to 3. They contended that they had no knowledge of O.S.No.7 of 2001 filed by petitioner and if the said suit had been filed in 2001, the petitioner ought to have impleaded respondent nos.1 to 3 in that suit since the mortgage in their favour is of the year 2000. They contended that the petitioner, even though he was aware of the mortgage in the year 2000, has not impleaded the respondent nos.1 to 3 in O.S.No.7 of 2001 and this clearly indicates that the only intention of petitioner in filing this petition is to drag on the suit. They further contended that the trial has already commenced and 1st respondent had been examined as PW.1, and at this juncture, this application has been filed on untenable grounds.

6. By order dt.04.09.2015, the Court below dismissed the said application. It referred to the contentions of both sides and observed that no material is placed on record by petitioner to show *prima facie* that the suit schedule mortgage property is joint family property. It observed that the material on record in O.S.No.12 of 2003

seems to suggest that the suit schedule property exclusively belongs to 4th respondent. It also observed that probably on account of family necessity, the suit mortgage deed was executed. It observed that petitioner had attested a special Power of Attorney dt.16.07.2004 executed by 4th respondent, appointing petitioner's father, o n e Gongalla Bhaskar, to contest the present suit O.S.No.12 of 2003, and this indicates that petitioner has knowledge about the present suit at least from 16.07.2004. It therefore held that his presence is not necessary for adjudicating the suit.

7. Challenging the same, the present Revision is filed.

8. Heard Sri T. Lakshminarayana, counsel for petitioner; and Sri V. Ravi Kiran Rao, counsel for respondent nos.1 to 3.

9. The counsel for petitioner reiterated the stand taken by his client in the Court below that petitioner would be affected if the suit O.S.No.12 of 2003 is decreed since the property mortgaged by 4th respondent and which is subject matter of O.S.No.12 of 2003, is joint family property and his suit for partition of the said property along with other property in O.S.No.7 of 2001 was pending before the II Additional District Judge, Warangal. He also criticized the order passed by the Court below for giving

certain findings as to the nature of the suit schedule property and also the necessity for creation of the mortgage by 1st respondent in it, and contended that this practically amounts to pre-judging the suit.

10. On the other hand, the counsel for respondent nos.1 to 3 refuted the above contentions, and supported the order passed by the Court below.

11. I have noted the submissions of both sides.

12. The suit O.S.No.12 of 2003 has been filed by respondent nos.1 to 3 before the Senior Civil Judge, Mahabubabad against 4th respondent for recovery of money on the basis of a mortgage. The petitioner is contending that the property which is alleged to have been mortgaged by 4th respondent in favour of respondent nos.1 to 3 is joint family property, and O.S.No.7 of 2001 has been filed by him for partition thereof along with other properties, and therefore, he should be impleaded in the present suit.

13. Order 1 Rule 10 (2) C.P.C. permits the Court, at any stage of the proceedings, to implead persons who ought to have been impleaded either as a plaintiff or defendant or whose presence before the Court is considered necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit.

14. The question for consideration is “*whether the petitioner is entitled to be impleaded in the suit*”, having regard to the facts pleaded by him.

15. The petitioner’s claim is that the suit schedule property is joint family property and not self-acquired property of 4th respondent, and therefore, the 4th respondent could not have mortgaged the property in favour of respondent nos.1 to 3. Thus, the petitioner is seeking adjudication on the nature of property, whether it is self-acquired property or joint family property in the suit for recovery of money based on a mortgage (i.e., O.S.No.12 of 2003). If the petitioner is impleaded in this suit, it would result in converting the suit for recovery of money on the basis of a mortgage into a suit to decide the title of 4th respondent. This cannot be allowed to be permitted. Moreover, it is an admitted fact that petitioner has attested a special Power of Attorney dt.16.07.2004 executed by 4th respondent in favour of his brother Gongalla Bhaskar to represent the 4th respondent in O.S.No.12 of 2003. Therefore, the petitioner is aware of O.S.No.12 of 2003 as far back as on 16.07.2004, but till 2008 the petitioner had done nothing to get himself impleaded. The petitioner has admittedly not even attempted to implead respondent nos.1 to 3 in O.S.No.7 of 2001.

16. Therefore, I am of the view that the Court below was correct in opining that the only purpose for filing this application is to delay the disposal of the suit. Of course, while rejecting petitioner's application for impleadment it was not proper for the Court below to make observations as to whether the property is the exclusive property of 4th respondent or not, or if there is necessity to execute the mortgage which issues are required to be decided in the suit. Therefore, any observations of this nature would not be binding on petitioner.

17. Therefore, I do not find any merit in the Revision, and the same is accordingly dismissed. No order as to costs.

18. It is however made clear that it is open to petitioner to raise any claim in respect of the property which is subject matter of O.S.No.12 of 2003 if the said suit is decreed, and any observations made in this order by the Court below shall not be taken into account while deciding any such application, and such application will have to be decided on merits.

19. Miscellaneous applications, pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 01-10-2015

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