

HON'BLE SRI JUSTICE R. SUBHASH REDDY

Civil Revision Petition Nos.2491, 2492 & 2563 of 2015

COMMON ORDER:

These Civil Revision Petitions, under Article 227 of the Constitution of India, are filed by third parties to the suit in O.S.No.1287 of 1985 on the file of the IV Senior Civil Judge, City Civil Court, Hyderabad, as such, they are heard together and disposed of by this common order.

2. C.R.P.Nos.2491 of 2015 and 2563 of 2015 are filed against common order dated 17.04.2015 passed in I.A.Nos.769 and 770 of 2014 respectively in I.A.No.448 of 2006. While C.R.P.No.2492 of 2015 is filed against order dated 17.04.2015 passed in I.A.No.771 of 2014 in I.A.No.448 of 2006 in O.S.No.1287 of 2015.

3. The petitioners are third parties to the suit. The suit is filed for partition and separate possession of 'A' and 'B' schedule properties. By common order dated 17.04.2015 passed in I.A.Nos.769 and 770 of 2014, the said I.As., filed by the petitioners for their impleadment as party-respondents, is dismissed. Consequent to the common order passed in I.A.Nos.769 and 770 of 2014, I.A.No.771 of 2014 is also dismissed.

4. The petitioners herein filed I.A.Nos.769 and 770 of 2014 under Order I Rule 10 read with Section 151 CPC seeking to implead themselves as respondents 8 to 10 in I.A.No.448 of 2006 in O.S.No.1287 of 1985. The respondents have filed I.A.No.449 of 2006 seeking appointment of Advocate-Commissioner for partitioning the suit schedule properties including item Nos.2 and 3 of 'B' Schedule properties. In the aforesaid I.A., Advocate-Commissioner is appointed for partitioning the suit schedule properties, pursuant to passing of preliminary decree in the suit. At that stage, petitioners, claiming independent right to the said items, have filed the I.As., for impleadment on the ground that their grandfather by name late

K. Achaiah has purchased the said items of the property 60 years back for less than Rs.100/- under un-registered sale deed. Petitioners, while admitting that their father K. Sudama died on 13.12.2012, leaving them as legal representatives, and alleging that, by virtue of the steps taken by the Advocate-Commissioner their rights are affected, sought impleadment by the said I.As.

Referring to the decree obtained in O.S.No.859 of 2008 filed on the file of the X Junior Civil Judge, City Civil Court, Hyderabad, against the 3rd respondent and further pleading that the 3rd respondent, in collusion with other petitioners are trying to disturb their possession with regard to items 2 and 3 of the 'B' Schedule properties, they sought impleadment. It is also stated that when the Government claimed the same property on the ground that it belongs to the Government, on their application, regularization orders were issued and when the said orders were cancelled, W.P.No.22189 of 2011 is filed before this Court in which interim orders are granted against orders of cancellation of regularization. Based on their independent right claiming as owners of the said property, they sought impleadment as party-respondents.

5. Respondents 2 to 6 filed counter-affidavit. A separate counter-affidavit is filed by 8th respondent. 9th respondent has filed memo adopting the counter-affidavit filed by respondents 2 to 6. Respondents 12 and 13 also filed separate counter-affidavits opposing the relief sought by the petitioners. In the counter-affidavit filed by respondents 12 and 13, it is averred that they are the absolute owners of the house bearing No.3-5-992 (Old No.6304) admeasuring 100 sq. yards situated at Narayanguda, Hyderabad by virtue of registered sale deed bearing document No.2759/2007 dated 10.10.2007. It is further averred that petitioners-third parties are tenants in the 'B' Schedule property and, after purchase of the same by the 13th respondent, their tenancy was attorned in favour of late

K. Sudama, who is the father of the petitioners, who has tendered monthly rents to 13th respondent till January, 2008 and, thereafter rents were not paid. It is pleaded that 13th respondent has filed claim petition in rent control proceedings in R.C.No.202 of 2009, wherein specific findings are recorded by the Tribunal that late father of petitioners has paid rents to 13th respondent and appeal filed by the petitioners is pending consideration. Further, while pleading that, inasmuch as the suit is for partition in which preliminary decree is already passed, petitioners are neither necessary nor proper parties, they prayed for dismissal of the I.As.

6. The trial court, having considered the claim of the petitioners, dismissed I.A.Nos.769 and 770 of 2014, by impugned common order dated 17.04.2015 and

also I.A.No.771 of 2014 by separate order.

7. Heard learned counsel for the parties and perused the material on record.

8. It is contended by the learned counsel for petitioners that as rights of petitioners are affected, by virtue of inclusion of their property which is one of the schedule properties in O.S.No.1287 of 1985 and they are sought to be dispossessed by the

Advocate-Commissioner appointed in the final decree proceedings, they are necessary and proper parties. To substantiate his plea, learned counsel relied on decisions of this Court in *Syed Mohiddin (died)* and another, v. Abdul Rahim and others, *K. Madhavalatha and others v. C.P. Rajendra Naidu and others* and a decision of the Hon'ble Supreme Court in *Savitri Devi v. District Judge, Gorakhpur and others*

9. On the other hand, it is contended by the learned counsel for respondents that suit in O.S.No.1287 of 1985 is only for partition and separate possession and preliminary decree is already passed; as the petitioners are setting up their independent right, as such, they are neither proper nor necessary parties for their impleadment in the final decree proceedings. In support thereof, he relied on decisions of the Hon'ble Supreme Court in *Venkatrao Anantdeo Joshi and others v. Malatibai and others*, *Muthavalli of Sha Madhari Diwan Wakf S.J. Syed Zakrudeen and Anr. V. Syed Zindasha and others* and a decision of a learned single Judge of this Court in *Rukya Bee and another v. Syed Afzal and others*. It is further submitted that 13th respondent has filed claim petition in rent control proceedings in R.C.No.202 of 2009, wherein specific findings are recorded by the Tribunal that late father of petitioners has paid rents to 13th respondent, as such, the claim of the petitioners is fraudulent and vexatious.

10. The suit in O.S.No.1287 of 1985 is a suit for partition and separate possession of 'A' & 'B' schedule properties and preliminary decree is already passed and for passing of final decree,

Advocate-Commissioner is appointed in I.A.No.449 of 2006. At that stage, I.As., came to be filed by the petitioners for their impleadment as party-respondents. Even in the petition filed in support of the I.As., it is their case that their grandfather late K. Achaiah purchased the property in question 60 years back for less than Rs.100/- under unregistered sale deed. It is further

their case that their father late

K. Sudama died on 13.12.2012. The father of the petitioners was the respondent in R.C.No.202 of 2009 on the file of the IV Additional Rent Controller, Hyderabad and the said petition filed for eviction was allowed on 28.12.2010 and the claim of title raised by the petitioners was negated, as against which appeal is filed and stated to be pending. It is fairly well settled that, for adjudicating the application filed under Order I Rule 10 CPC, all that is to be considered is whether the applicant has made out prima facie case on his interest in the subject-matter of the dispute and whether his presence is necessary for proper and effectual adjudication of the dispute. It is the claim of the petitioners that they have filed suit in O.S.No.859 of 2008 against 13th respondent and the same is decreed. But, by virtue of the very same judgment, petitioners wanted to establish their own title by separate proceedings. At the same time, they have not initiated any proceedings for declaration and title. Apart from the same, petitioners have suffered decree of eviction in rent control proceedings in which similar plea set up by the petitioners claiming title is negated. As against the same, appeal is filed and the same is stated to be pending. When the father of the petitioners has suffered decree of eviction in rent control proceedings, and when claim set up for independent title is negated, it is not open for the petitioners to plead that title to the property in question is acquired by their grandfather by unregistered document for less than Rs.100/- about 60 years ago. Added to the same, if petitioners set up independent title, it is for them to file appropriate suit for title, but their claim for title cannot be decided in I.A., which is pending for passing of final decree. If the I.As., filed by the petitioners for their impleadment are allowed, it will enlarge the scope of the applications itself. It is also fairly well settled that applications for impleadment which enlarge the scope of the proceedings cannot be allowed.

11. In the decision in *Syed Mohiddin (died)* and another (1 supra) relied on by the learned counsel for petitioners, a learned single Judge of this Court has held that third party can be added as defendant after preliminary decree is passed in a partition suit. In the decision in *K. Madhavalatha and others* (2 supra), a learned single Judge of this Court has dealt with the scope of consideration of application filed under Order I Rule 10 CPC. Further, in the

decision in *Savitri Devi v. District Judge* (3 supra), the Hon'ble Supreme Court has held that transferee pendente lite of interest in immovable property is necessary party. I have carefully perused all the said decisions and having regard to the fact situation in the case on hand and the claim of independent title set up by the petitioners, I am of the view that the said decisions would not render any assistance in support of the case of the petitioners.

12. On the other hand, in *Rukya Bee and another* (6 supra), it is held by a learned single Judge of this Court that no petition can be permitted to be filed under Order I Rule 10 in final decree proceedings. Similarly, the Hon'ble Supreme Court in *Muthavalli of Sha Madhari Diwan Wakf S.J. Syed Zakrudeen* (5 supra), has held that civil court ordinarily would not entertain a petition for impleadment of a third party in a lis pending before it, which would enlarge the scope and ambit of the dispute between the parties. Further, in the decision in *Narayan Chandra Garai and others v. Matri Bhandar Pvt. Ltd., and another*, a learned single Judge of Calcutta High Court has held that merely because a person is affected by a judgment, that, by itself, is no reason to allow his impleadment and the main consideration should be whether or not presence of such person is necessary to enable the Court to effectually and completely adjudicate upon and settle the questions involved in the suit. All the said decisions referred above would support the case of the respondents. Having regard to the scope of the application in final decree proceedings, as the petitioners are setting up their own title based on the purchase of the property by their grandfather about 60 years ago, while it is open to them to set up their own title by way of independent suit, but their impleadment at this stage would definitely enlarge the scope of the I.As., pending passing of final decree.

13. For the aforesaid reasons, I am of the view that the impugned common order is in accordance with law and no case is made out to interfere with the same in these Civil Revision Petitions under Article 227 of the Constitution of India.

14. Accordingly, C.R.P.Nos.2491 of 2015 and 2563 of 2015 are dismissed. Consequently, C.R.P.No.2492 of 2015 is also dismissed. No order as to costs.

As a sequel, miscellaneous petitions if any pending in the Civil Revision

Petitions stand closed.

R. SUBHASH REDDY, J

October 9, 2015

MRR