

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

CIVIL REVISION PETITION NO.1669 OF 2015

Between:

Bommareddy Padma and others

.. Petitioners

and

Bommareddy Subba Reddy and others

.. Respondents

DATE OF JUDGMENT PRONOUNCEMENT : 31st JULY, 2015

SUBMITTED FOR APPROVAL:

-
-
-

THE HON'BLE SRI JUSTICE SANJAY KUMAR

- | | | |
|----|---|--------|
| 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.1669 OF 2015

ORDER

This Civil Revision Petition under Section 115 CPC arises out of the order dated 02.09.2014 passed by the learned I Additional District Judge, Eluru, West Godavari District, dismissing I.A.No.369 of 2013 in A.S.No.40 of 2010. The said IA was filed by the petitioners herein, being the appellants in A.S.No.40 of 2010, under Order 1 Rule 10(2) CPC seeking to implead the third respondent in the IA as a party to the appeal.

Despite service of notice, the respondents did not choose to enter appearance before this Court in person or through learned counsel.

The petitioners, the appellants in A.S.No.40 of 2010, were the plaintiffs in the suit, O.S.No.107 of 2005, on the file of the learned Additional Senior Civil Judge, Eluru. The said suit was filed for partition of the plaint schedule properties into three equal shares and for allotment and delivery of possession of the plaintiffs' share.

The first plaintiff is the wife of the first defendant, while plaintiffs 2 and 3 are their children. The second defendant is the proposed alienee under an agreement of sale (Ex.A.8) said to have been executed by the first defendant. The trial Court dismissed the suit on the ground that the father of the first defendant, who would be the kartha of the joint family, was not impleaded and the suit was filed for partial partition of the joint family properties, which is not recognized in law. Aggrieved by the dismissal of the suit, the plaintiffs filed A.S.No.40 of 2010 before the learned I Additional District Judge, Eluru, West Godavari District. Therein, they filed the subject IA seeking to implead the first defendant's

father, who was shown as the third respondent in the IA. The first defendant and his father, the third respondent in the IA, did not contest the said IA. Only the second respondent therein, being the second defendant in the suit, filed a counter to the IA stating that it was a collusive petition to drag on the proceedings so as to defeat his interest under Ex.A.8 agreement of sale.

The appellate Court, upon due consideration of the matter, found that the petitioners failed to substantiate the necessary requirements under Order 1 Rule 10 CPC for allowing them to implead the proposed respondent as a party to the appeal. Further, the appellate Court found merit in the contention of the second respondent that the IA was collusive, as neither the first respondent nor the third respondent in the IA chose to contest the same. The appellate Court found that there was no *bonafide* mistake on the part of the petitioners, warranting exercise of discretion in their favour by allowing impleadment of the first defendant's father as a party to the appeal at that stage. The appellate Court accordingly dismissed the IA.

Heard Sri Bujji Babu Davuluri, learned counsel for the petitioners.

It is an admitted fact that the father of the first defendant was examined in the suit proceedings as D.W.2. The plaintiffs in the suit were therefore well aware of his status *vis-à-vis* the joint family. Despite the same, they did not choose to take any steps to implead him during the pendency of the suit. That apart, this Court is inclined to accept the finding of the appellate Court that the subject IA was collusive in nature. Neither the proposed party nor the first defendant in the suit chose to contest the IA, which lent credibility to the allegation put forth by the second respondent that it was only to defeat his interest under Ex.A.8 agreement of sale and to drag on the proceedings that the subject IA was filed. This Court therefore finds no ground to interfere with the cogent and well reasoned order passed by the appellate Court.

The CRP is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No

order as to costs.

SANJAY KUMAR, J

31st JULY, 2015

Svv