

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

CIVIL REVISION PETITION NOs.3673, 4084 AND 4110 OF 2015

DATED:01-10-2015

C.R.P. No.3673 of 2015

Between:

Repala hari Prasad ... Petitioner

And

Kanneganti Anjaneyulu

and another ... Respondents

... Respondents

COUNSEL FOR THE PETITIONER: Mr. Ch. Venkat Raman

COUNSEL FOR THE RESPONDENTS: -

THE COURT MADE THE FOLLOWING:

COMMON ORDER:

-

The petitioner is a third party to E.A. No. Nil, in E.P. No.1 of 2015 in O.S. No.19 of 2014, on the file of the XI Additional District Judge, Tenali. The said suit was filed for specific performance of an agreement of sale by respondent No.1 against respondent No.2, who is no other than the mother of the petitioner. Respondent No.2 was set *ex parte* and an *ex parte* decree was passed by the lower Court. Seeking execution of the decree, respondent No.1 has filed E.P. No.1 of 2015. In that E.P.,

the petitioner has filed an E.A. seeking his impleadment as second judgment debtor in E.P. No.1 of 2015. He has also filed an I.A. for setting aside the *ex parte* decree in O.S. No.19 of 2014 and one more I.A. for seeking his impleadment in the suit. All these applications were dismissed by the lower Court at the pre-numbering stage on the ground that the petitioner has already filed O.S. No.34 of 2015 seeking a declaration that the decree in O.S. No.19 of 2014 out of which the present orders arise is void *ab initio*, and hence the applications are not maintainable. Feeling aggrieved by these orders, the petitioner filed these revision petitions.

As regards the dismissal of the two I.As filed for setting aside the *ex parte* decree and for his impleadment in the suit, the same does not call for interference. As a substantive suit has already been filed by the petitioner seeking invalidation of the decree in O.S. No.19 of 2014, the applications filed for setting aside the *ex parte* decree and also for his impleadment in the suit are wholly un-necessary. However, the said reason does not hold good for rejecting the E.A. even before it is numbered for his impleadment as judgment debtor in the E.P.

When a petition for execution of an *ex parte* decree is filed, every third party, who has interest in the subject matter of the E.P., is entitled to get impleaded irrespective of whether he has initiated any other legal proceeding on the same subject matter, for any order that may be passed in the E.P. may adversely affect his interest. Therefore, even if the petitioner has filed O.S. No.34 of 2015 seeking setting aside of decree in O.S. No.19 of 2014, that would not preclude the petitioner from getting himself impleaded in the E.P. filed in O.S. No.19 of 2014. Hence, I am of the opinion that the lower Court has committed a jurisdictional error in rejecting the E.A. filed by the petitioner for his impleadment in the E.P.

This Court has noticed that the learned XI Additional District Judge, Tenali, has the tendency of rejecting the plaints/applications at pre-numbering stage by passing elaborate orders. This procedure being followed by the lower Court at times causes substantial injustice to the parties. Unless a suit or an application is *ex facie* barred by law, it is not desirable for the Courts to reject them even before they are numbered. It is always appropriate that the suits or applications which are not *ex facie* barred by law are numbered and if there is any dispute about the maintainability of the said suit or application, the defendants/respondents, as the case may be, would raise such objection/s and it is at that stage that the Court can decide on the question of maintainability, after hearing both sides.

Subject to the above observations, C.R.P. No.3673 of 2015 is allowed and the order of the lower Court is set aside. The lower Court is directed to number the E.A. and decide the same on merits after notice to the decree holder. C.R.P. Nos.4084 and 4110 of 2015 are dismissed.

As a sequel to disposal of the civil revision petitions, C.R.P.M.P. Nos.4934 and 5397 of 2015 in C.R.P. No.3673 of 2015; C.R.P.M.P. Nos.5437 and 5438 of 2015 in C.R.P. No.4084 of 2015; and C.R.P.M.P. Nos.5461 and 5462 of 2015 in C.R.P. No.4110 of 2015 shall stand disposed of as infructuous.

---

C.V. NAGARJUNA REDDY, J

01-10-2015

bnr