

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

Civil Revision Petition No.1680 of 2015

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Dated 05th June, 2015

Between:

M/s.Lakshmi Venkateswara General Merchants

...Petitioner

and

Maddi Netaji and another

...Respondents

Counsel for the petitioner: Sri K.Jayakumar

Counsel for the respondents: None appeared

The Court made the following:

ORDER:

This civil revision petition arises out of order, dated 16.03.2015, in I.A.No.507 of 2014 in O.S.No.165 of 2014, on the file of the learned III Additional Junior Civil Judge, Guntur.

Though notice was served on the respondents, no one entered appearance on their behalf.

I have heard Sri K.Jayakumar, learned counsel for the petitioner, and perused the record.

Respondent No.1 filed the above-mentioned suit against respondent No.2 for

eviction. It is his pleaded case that respondent No.2 is a partnership firm which was inducted into possession of the suit schedule premises on lease and that as respondent No.2 has not vacated the suit schedule premises in spite of quit notice under Section 106 of the Transfer of Property Act, 1882 he has filed the suit for eviction.

In the said suit, one Polepalli Bala Nageswara Rao claiming to be one of the two partners of respondent No.2-firm filed I.A.No.507 of 2014 under Order I Rule 10 CPC in the name of the firm itself for his impleadment as defendant No.2. It was pleaded in the said IA that the firm comprises two partners and that respondent No.1 has not issued any quit notice to Polepalli Bala Nageswara Rao, another partner of the firm. He has, therefore, sought to come on record as defendant No.2. This application was dismissed by the lower Court by the order under revision.

Before examining the correctness or otherwise of the order of the lower Court, this Court needs to refer to the incongruity from which the application filed by the petitioner suffers. Admittedly, the firm is an unregistered one. Under Section 69 of the Indian Partnership Act, 1932 an unregistered firm cannot sue or be sued in its name. Therefore, the IA ought to have been filed by Polepalli Bala Nageswara Rao in his capacity as partner of the firm and filing the application in the name of the firm itself is wholly misconceived.

Be that as it may, the issue that arose for consideration before the lower Court was whether the left out partner was a necessary and proper party to the suit. The lower Court while on one hand holding that an unregistered firm cannot sue or be sued has fallen into a serious error in rejecting the application filed by the left out partner for his impleadment. It is no one's case that Polepalli Venkata Subba Rao who has been shown to be representing respondent No.2-firm is the Managing Partner. As the partnership firm has no legal entity and an unregistered firm cannot be sued, respondent No.1 cannot maintain the suit unless both the partners of the firm are impleaded in the suit. The law is well settled that a partnership firm is a compendium of partners and if it is registered, it should be represented by the Managing Partner and if it is unregistered, all the partners need to be represented. The lower Court has failed to perceive this fundamental legal aspect.

As noted above, instead of filing the IA in the name of Polepalli Bala Nageswara Rao, the same was filed in the name of firm. As I find this as a curable

defect, the IA is deemed to have been filed by Polepalli Bala Nageswara Rao, in his capacity as one of the partners of the firm. Accordingly, Polepalli Bala Nageswara Rao is impleaded as defendant No.2 in the suit.

I.A.No.507 of 2014 and the civil revision petition are accordingly allowed.

As a sequel to disposal of the civil revision petition, C.R.P.M.P.No.2257 of 2015 shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

05th June, 2015

VGB