

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION Nos.2685 & 4100 of 2015

COMMON ORDER:

Heard the learned counsel for petitioner and the learned counsel for respondents. Since these Civil Revision Petitions emanate from the same proceedings, they are being disposed of by this common order.

C.R.P.No.2685 of 2015:

2. The petitioner is a third party to O.S.No.40 of 2012 on the file of the Court of the Principal Junior Civil Judge, Tadepalligudem (for short, trial Court). The said suit was filed by the first respondent herein against the second respondent herein seeking permanent injunction in respect of Ac.0-71 cents of land in R.S.No.578 of Nallajerla Village and Mandal, West Godavari District. An *ex parte* decree was passed on 18.04.2012. Before passing the said *ex parte* decree, the petitioner herein filed I.A.No.846 of 2012 on 29.02.2012 seeking to implead him as the second respondent in the suit and the said petition was returned on 18.04.2012 raising some objections. The petitioner complied with the objections and re-presented the implead petition on 19.04.2012. However, on 18.04.2012, the *ex parte* decree came to be passed in the suit. As the suit itself was decided by way of an *ex parte* decree on 18.04.2012, the trial Court dismissed the implead petition on 20.01.2015 on the ground that *ex parte* decree was already passed on 18.04.2015. Challenging the said order, the present CRP is filed.

3. The learned counsel for the petitioner submits that when the implead petition is numbered and notices were ordered, it should not have been dismissed on the ground of passing of *ex parte* decree. In view of the passing of *ex parte* decree, the petitioner has no remedy, except filing this Civil Revision Petition.

4. In the circumstances, in view of the disposal of the suit itself, the present application seeking impleadment of the petitioner as the second

defendant in the suit is not maintainable and the order of the trial Court is correct.

C.R.P.No.4100 of 2015:

5. This Civil Revision Petition arises out of an application in E.A.No.128 of 2013 filed by the petitioner as a claimant in E.P.No.87 of 2012 filed by the plaintiff/deGREE holder in O.S.No.40 of 2012.

6. The trial Court dismissed E.A.No.128 of 2013 along with E.A.No.114 of 2013, by order dated 09.07.2015. E.A.No.114 of 2013 was filed under Order XXI Rule 101, whereas E.A.No.128 of 2013 was filed under Order XXI Rule 100, 97 to 99 read with Sections 144, 47 and 151 CPC. The trial Court dismissed the said applications by holding that they are not maintainable.

7. The learned counsel for the petitioner is unable to show any provision or law where a claim petition at the instance of a third party is maintainable in an execution petition in a decree for permanent injunction. Hence, I see no ground to interfere with the order of the trial Court.

8. In the circumstances, both the Civil Revision Petitions are dismissed. No order as to costs. Miscellaneous petitions, if any, pending in both the Civil Revision Petitions shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 14.12.2015
TJMR