

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.5817 of 2012

ORDER:

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This Civil Revision Petition, under Article 227 of the Constitution of India, by the proposed 8th defendant is directed against the order dated 05.12.2011 of the learned V Senior Civil Judge, City Civil Court, Hyderabad passed in I.A.no.1644 of 2009 in O.S.no.1779 of 2008.

2. I have heard the submissions of the learned counsel for the revision petitioner/proposed 8th defendant and the learned counsel for the 1st respondent/plaintiff. The other respondents are stated to be not necessary parties. I have perused the material record.

3. The facts necessary for consideration, in brief, are as follows:

The plaintiff brought the suit for partition against the defendants. In that suit, she had filed the subject interlocutory application for impleadment of three proposed parties, including the proposed 8th defendant, as defendants 6 to 8. The said application was resisted by the proposed 8th defendant. By the impugned orders, the trial Court had allowed the petition and directed impleadment of all the proposed parties including the proposed 8th defendant to the suit. Aggrieved of the said orders, the proposed 8th defendant has filed the present revision.

4. To begin with, the case of the plaintiff, in support of her request to permit her to implead the proposed parties, in brief, is this:

In the suit for partition filed by her, the 3rd defendant had filed a written statement stating that 'A' schedule property is already sold to third parties. Hence, she had made enquiries in regard to the status of 'A' and 'B' schedule properties and had come to know recently that 'A' schedule property was purchased by the proposed 6th defendant-A.Anand from the defendants 1, 4 and 5. On 07.11.2009, she had also obtained a copy of the document

bearing number 515 of 2003 whereunder the said Anand had sold a part of the 'A' schedule property to the proposed 7th defendant-Tanda Srinivas. Her enquiries in regard to 'B' schedule property and the copy of the document obtained from the office of sub-registrar, Chikkadpalli revealed that the defendants 1, 3, 4 and 5 had entered into a development agreement-cum-General Power of Attorney, with M/s SVS Builders, the proposed 8th defendant, which is a partnership firm represented by Managing partner-A.Venkatesh. She has not given consent for sale of 'A' schedule property or for entering into development agreement and she did not receive any amount or share in respect of the schedule properties. The said defendants had entered into the said development agreement with the proposed 8th defendant and had given 'B' schedule property for development with a *mala fide* intention. The said transactions entered into in respect of 'A' and 'B' schedule properties are not binding on her. Since the said proposed parties had acquired interest in the suit schedule properties, it has become necessary to seek their impleadment to the suit for partition.

5. The Managing Partner of the proposed 8th defendant firm having filed a detailed counter denying each and every averment, had *inter alia* contended that he made enquiries and verified the documents at the time of entering into the development agreement-cum-GPA with the owners or the legal representatives of the original owner; after seeing the family members certificate issued by the revenue authorities, he came to the conclusion that that all the proper parties and all the family members, who are the legal representatives of the deceased Lakshmana Rao, are entering into the development agreement; he is a bona fide purchaser; hence, the petitioner has no right in the said property; the plaint averments contrary to the said facts are all false; after the suit, he made enquires and came to know that the petitioner was given in adoption to one family during her childhood and that she is not a family member of the owners; her name was not shown in the ration card; this proposed 8th defendant had invested huge money on the property and had completed the construction and had delivered shares of the

respective owners and had acquired rights in the property towards its share, which is the share of the builder; it had also sold the same to the third parties; therefore, the proposed 8th defendant is by now, neither the owner nor possessor of the property; the property is not available for partition even as on the date of the suit; and, the petition is, therefore, liable for dismissal.

6. Having considered the above pleadings, the trial Court by a cryptic order had allowed the petition stating that in a suit for partition, if the proposed defendants 6 to 8 are brought on record, it would be just and proper and that the said course would not cause any prejudice to any of the parties. Aggrieved of the said orders, the proposed 8th defendant had filed this revision.

7. The learned counsel for the proposed 8th defendant had reiterated the contentions of the 8th defendant, which are stated in the counter and which are extracted supra, in detail, and had further submitted that the order impugned is not a reasoned order and is unsustainable under facts and in law, more particularly when the proposed 8th defendant is not a sharer and is only a developer and as it had already developed the property and alienated its share, which was given to it towards the development expenses; and that it is not a necessary and proper party to the suit for partition between the co-sharers.

8. In reply, the learned counsel for the plaintiff while supporting the impugned order had reiterated the stand of the plaintiff, which is already stated supra. He would also submit that since the proposed 8th defendant acquired interest in the property by virtue of the development agreement-cum-GPA and had sold a part of the suit property to third parties after acquiring interest in the suit schedule properties, the proposed 8th defendant is a necessary and proper party.

9. I have given earnest consideration to the facts and the submissions.

10. It is pertinent to note that the proposed 6th and 7th defendants, who are

directed to be impleaded as parties to the suit are not assailing the orders of the court below. Though the order of the Court below is cryptic, the Court below has given a reason that it is just and proper to implead the proposed parties since the suit is for partition; and that their addition as defendants is not going to cause prejudice to any of the parties. The law is well settled that when the conclusion in the order of the Court below is correct and is sustainable under facts, but, the order lacks sufficient reasons, this Court can sustain the impugned order, if otherwise sustainable, by supplying or supplementing the reasons; further, merely on the ground that impugned order lacks adequate reasons, the same need not be set aside. The issue whether or not the plaintiff is entitled to a share in the suit schedule properties has to be decided after full-fledged trial. To the exclusion of the plaintiff, the other defendants 1, 3, 4 and 5 have entered into a development agreement-cum-GPA with the proposed 8th defendant, a firm. The proposed 8th defendant is not just a developer; having developed the property and made the construction, it had acquired right and interest in the property developed and it had in fact acquired right and interest to a share in the developed/constructed property and alienated that share in the property to third parties. Therefore, in the well considered view of this Court, the proposed 8th defendant firm, which had alienated a part of the schedule of properties to 3rd parties after acquiring interest by virtue of the development agreement-cum-GPA document, is answerable in regard to the claim of the plaintiff in the suit and is therefore, a necessary and proper party to the suit. Further, the presence of the proposed 8th defendant as party to the suit is necessary, in the well-considered view of this Court, for effective adjudication of the suit for partition. Therefore, this Court finds that the order impugned does not call for any interference.

11. In the result, the Civil Revision petition is dismissed.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

29th February 2016
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M.SEETHARAMA MURTI, J