

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.2596 of 2016

ORDER:

This civil revision petition under Article 227 of the Constitution of India by the unsuccessful petitioner/ plaintiff is directed against the orders dated 11.12.2015 of the learned II Additional District Judge (Judge, Fast Track Court), Mahabubnagar, passed in IA.No.105 of 2015 in OS.No.55 of 2006.

I have heard the submissions of the learned counsel for the revision petitioner/ plaintiff ('the plaintiff', for brevity) and the learned counsel for the contesting respondents 2 and 3. It is represented that proof of service in regard to other respondents was filed in the Registry, vide Memo USR No.4481 of 2016. I have perused the material record.

The plaintiff brought the suit against the defendants for specific performance. In the pending suit, the plaintiff filed the aforementioned interlocutory application under Order I Rule 10 of the Code of Civil Procedure requesting to implead two third parties as defendants 12 and 13. Though no counter is filed and the said petition was not resisted by any of the contesting defendants, the trial Court dismissed the petition. Therefore, the plaintiff is before this Court.

At the hearing, it is fairly stated that the proposed parties are not shown as respondents in the IA and that the IA was disposed of by the trial Court as if the proposed parties are also shown as party respondents.

Be it noted that a perusal of the order impugned would show that the respondents are served with notices and no counters are filed. From the said observation in the order, it is not clear as to whether the proposed parties, who are not arrayed as respondents, were given an opportunity to file counters

and counters, if any, are filed by them, if such an opportunity was afforded to them. Since the order of the Court below does not reflect that the proposed parties, who are not arrayed as respondents, were given an opportunity to file counters or that they have not filed counters despite such an opportunity was given, the order disposing of the application for impleadment cannot be said to have been an order passed on merits insofar as the proposed parties who are not shown as proposed respondents in the cause title of the IA. In that view of the matter, this Court is of the considered view that this revision petition is devoid of merit and is liable for dismissal. However, since this Court did not go into the merits of the matter and the revision is being dismissed on a technical ground, this Court is of the considered view that an opportunity can be given to the plaintiff to file a fresh application for the same relief before the trial Court for consideration by the trial Court in strict accordance with procedure and law.

In the result, the Civil Revision Petition is dismissed leaving it open to the plaintiff to file a fresh application for the same relief for consideration by the Court below afresh in accordance with procedure and law, however, uninfluenced by its observations in the order impugned in the revision. In view of the fact that the suit is of the year 2006, the plaintiff, if so advised, may file the application as directed in these orders within ten days from the date of the receipt of a copy of this order. On filing of any such application, the trial Court shall make an endeavour to dispose of the same within fifteen days thereafter.

No order as to costs.

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

JUSTICE M. SEETHARAMA MURTI

19.08.2016
Vjl