

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.1282 of 2013

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the petitioners/proposed defendants 52 to 59 is directed against the orders dated 13.02.2013 of the learned V Additional District Judge, Medak at Sangareddy passed in IA.no.343 of 2012 in OS.no.45 of 2011 filed by them under Order I Rule 10 of the Code of Civil Procedure, 1908 requesting for their impleadment as defendants 52 to 59 in the suit.

2. I have heard the submissions of the learned senior counsel appearing for the revision petitioners/proposed defendants 52 to 59 ('the proposed defendants', for brevity), the learned counsel for the 1st respondent/plaintiff ('the plaintiff', for brevity) and the learned counsel appearing for the other contesting respondents, who are some of the defendants in the aforesaid suit. Respondents 3 to 11, 18 to 30, 33, 34 and 37 to 51 are stated to be not necessary parties. I have perused the material record.

3. The 3rd parties/proposed defendants had filed the subject application requesting for their impleadment in the aforesaid suit as defendants 52 to 59 *inter alia* contending as follows: "The plaintiff had filed the above suit against the defendants for rectification of entries in revenue records, partition and perpetual injunction with respect to the plaint schedule property. The plaintiff claimed partition of the plaint schedule lands between herself and the 1st defendant and to allot half share to her in severalty. The other defendants are strangers with no claim over said lands. Originally, one late Gurajala Bala Shankaraiah, Gurajala Rangaiah, Shankaraiah (@ Pedda Shankaraiah) Anjaiah, Rajaiah, Balshetty, Shiva Shankaraiah and Lingamaiah were co-owners and are in joint possession of the plaint schedule lands. The schedule lands were got divided by metes and bounds under a registered

partition deed bearing document no.1064 of 1347 Fasli of the Office of Registrar, Hyderabad. The certified copy of the said partition deed, which is in Urdu, and its English translation are filed. In the said partition, the lands mentioned in part-I of the schedule annexed to the partition deed were allotted to late Gurajala Bala Shankaraiah. Bala Shankaraiah had no issues. He had two wives viz., the plaintiff and the 1st defendant. He died on 30.04.1957. After his death, his two widows, the plaintiff and the 1st defendant, succeeded to the properties of late Bala Shanakaraiah and became joint owners and possessors of the said lands with equal shares. Lands mentioned in Part 2 of the schedule of the above partition deed were allotted to late Gurajala Rangaiah towards his share. After his death about 45 years back, his son and daughter/the proposed parties 1 and 2 acquired right, title and interest over the said lands by way of succession and became joint owners and possessors with equal shares. The lands mentioned in part 3 and part 4 of the schedule annexed to the abovementioned partition deed were allotted to late Gurajala Shanakaraiah (@ Pedda Shankaraiah) Anjaiah, Rajaiah, Balshetty, Shiva Shankaraiah and Lingamaiah; thereby they became joint owners and possessors of the said lands. After their demise, their legal heirs, including the proposed defendants became joint owners and possessors of the said lands. Balshetty and Lingamaiah died issueless. Therefore, the other legal heirs inherited their shares. Accordingly, the proposed parties 3 to 7 along with other heirs became entitled to the lands mentioned in part 3 and 4 of the schedule of the partition deed and remained in joint possession and enjoyment as owners. The plaintiff has every right to file suit for partition as regards to lands of part 1 of the schedule of the deed of partition, but she has no right or locus standi to claim the lands covering parts 2 to 4 of the partition deed, that too, without impleading the proposed parties and the other shareholders who are having rights over the said lands as per partition deed and who are necessary parties and who are adversely affected if not impleaded. The defendants 2 to 51, according to plaintiff, who are strangers and who are not having any rights over the plaint schedule property, are impleaded as parties. It is to be noted that the plaintiff filed a revision before the Collector, Medak at Sangareddy in regard to all the lands

covered by parts 1 to 4 of the aforesaid partition deed wherein the present proposed parties and other heirs of late Rangaiah, Shankaraiah (@ Pedda Shankaraiah) Anjaiah, Rajaiah, Balshetty, Shiva Shankaraiah and Lingamaiah along with others were shown as respondents. The second proposed party herein had filed her counter in the said revision by setting up her claim over the lands covered in part 2 of the schedule of the partition deed. The other respondents therein were about to file their counters, but, the said revision petition was disposed of. The Joint Collector while dismissing the said revision had *inter alia* held in his order that the relief sought in the revision involved complicated questions of title and that it is beyond the jurisdiction of revenue authorities. The certified copy of the said order dated 10.03.2010 is filed. Subsequent to the dismissal of the revision petition, the plaintiff had filed the present suit seeking the relief of rectification of entries in revenue records besides other reliefs. Strangely the plaintiff had omitted to implead the proposed parties and other shareholders as parties to the suit, deliberately. Apart from the present suit, there is another suit pending on the file of the Court of the learned Senior Civil Judge at Sangareddy filed by one Janpally Narayan Reddy and others against the plaintiff herein and others including the proposed parties 1 and 3 to 7 and other heirs of parties to parts 3 and 4 of the partition schedule. Some of the proposed parties herein filed written statements and are contesting the said suit. The plaintiff, who is shown as defendant no.1 in the said suit had also filed her written statement and is contesting the suit. The certified copies of the plaint and written statement in the said suit (OS.no.150 of 2008) are filed. In view of the facts and circumstances stated above, it is not only proper but also necessary to permit the proposed parties to be impleaded as party defendants to the instant suit. It is unjust that they cannot be treated as proper and necessary parties; and if they are not impleaded, they would suffer great detriment and injustice apart from immense loss and damage. If the proposed parties are not impleaded and not made parties to the suit they will be constrained to file a separate suit to enforce their rights, which results in multiplicity of proceedings. Under such contingency it cannot be said that the proposed

parties are neither necessary nor proper parties to the suit. The presence of the proposed parties is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit.

3.2 The plaintiff filed a counter *inter alia* contending as follows: 'The application of the proposed defendants is not maintainable either in law or on facts. The plaintiff filed suit for partition of the suit schedule properties, which are admittedly the properties of her late husband Bala Shankaraiah. He was murdered in the midnight of 30.04.1957. Subsequently, the plaintiff and the 1st defendant came into possession of the suit schedule properties and their names were also mutated in the revenue records *vide* succession proceedings bearing No.A3/899/10325/1958 dated 23.10.1961 issued by the Tahasildar, Sanga Reddy. The same were confirmed by the RDO *vide* orders dated 16.01.1963 in case No.A4/742/62. The first proposed party herein, in the succession proceedings, had raised objections on the basis of a Will said to have been executed by Bala Shanakariah. However, his claim was rejected. Suppressing the said fact and the documents the instant application is filed after a lapse of more than five decades with false allegations only with a view to cause hardship to the plaintiff. The plaintiff and the 1st defendant are admittedly the wives of late Gurajala Bala Shankaraiah. The proposed defendants have got nothing to do with the suit schedule property. The alleged claim of the proposed defendants on the basis of a registered partition deed is an independent claim based on an independent cause of action. Their claim can be agitated only in a separate suit. They were never in possession of the suit schedule properties and their names were never mutated in the revenue records. For the past more than five decades after the death of Bala Shankaraiah, the plaintiff and the 1st defendant are in joint possession of the suit schedule properties. The succession proceedings have also become final. For the first time in the present application, the proposed defendants had set up a partition deed. The allegations that there was a registered partition deed bearing document no.1064 of 1347 Fasli and that in that partition, lands mentioned in parts 1 to

4 of the schedule therein were allotted to the predecessors of the proposed defendants and that the present proposed defendants succeeded to the said properties are all false and invented for the purpose of this petition. The petition may be dismissed.

3.3 The 1st defendant had also filed counter in the same lines as that of the plaintiff and had *inter alia* further contended as follows:

The execution of the alleged registered partition deed bearing document no.1064 of 1347 Fasali is denied. None of the parties to the said partition deed are either one of the petitioners or one of the respondents in the present application. It is not stated as to how the proposed defendants are related to the parties to the alleged partition deed and how they are entitled to claim through the parties to the alleged partition deed. The plaintiff, in the revision proceedings before the Joint Collector of Medak District, had clearly contended that the shares of the remaining parties in the alleged partition deed were purchased by late Bala Shankaraiah during his life time as is evident from the Khasra Pahani and the Pahani for the year 1960-61 and consequentially all the lands were under the ownership and possession of late Bala Shankaraiah. The claims of the proposed defendants and the persons in the alleged partition deed are no way connected to the present suit proceedings. The plaintiff had not claimed the lands not connected to Bala Shankaraiah but which are mentioned in the alleged partition deed including the survey nos.18, 19, 41, 64 etcetera of Kollur village. None of the revenue records from the inception till date including the Sethwar, Khasra Pahani and the Form IA (ROR) registers does not reflect either the names of the parties to the alleged partition deed or none of the proposed defendants. Hence, the proposed defendants have no locus standi much less a triable case either in respect of the suit schedule lands or against the parties to the present suit. The alleged allotments amongst late Bala Shankaraiah and others are not supported by any document. Even as per the contentions in the affidavit filed in support of the petition, there are other legal heirs of the parties to the alleged partition deed. The said parties are not included in the present application for the reasons best known to the

proposed defendants. When the primary proceedings, that is, the revision proceedings before the Joint Collector do not connote any sort of right or interests of the proposed defendants and other alleged legal heirs of the parties to the alleged partition deed, the question of their impleading in the present suit does not arise. The proposed defendants have no *bona fides* on their part nor does the present application for their impleadment sustain any merit. Therefore, the present application entails dismissal with exemplary costs.

3.4 The case of the defendants 12 to 17, 31, 35 and 36 as stated in the counter affidavit filed by the defendant no.32 is as follows:

These defendants filed written statement denying the right of the plaintiff in their property. The proposed defendants are not concerned with the properties of Bala Shankaraiah. The present application is filed with an intention to knock away the valuable property of these and other defendants. The proposed defendants never approached any court of law claiming their alleged right even after the disposal of the case before the Joint Collector directing the parties to approach competent civil court. Defendant nos.31 and 32 are the absolute owners and possessors of the lands in Sy.no.82 admeasuring Ac.0.12 guntas, Sy.No.84 admeasuring Ac.0.08 guntas, having purchased the same from defendant no.2 under a registered sale deed dated 09.12.1980. Likewise, defendant no.27 also purchased the land which is part of the suit land through registered document dated 12.10.2007. The written statement filed by these defendants may be read as a part and parcel of the counter affidavit. The proposed defendants simply filed the petition under Order I Rule 10 (2). Nowhere in the petition a mention was made with regard to the consequential amendment which is mandatory under Rule 32 of the Civil Rules of Practice. If such consequential amendment is not sought, the petition shall be dismissed. The proposed defendants are no way concerned with the lands of these defendants. They are not proper and necessary parties to the suit. There is no merit in the petition. The petition is liable to be dismissed. The present petition against defendant no.10, who had died, is not maintainable.

3.5 During the course of enquiry before the trial Court, no documents were exhibited. On merits, the trial Court had dismissed the petition. Aggrieved of the said orders, the proposed defendants filed the present CRP.

4. The learned senior counsel appearing for the proposed defendants, while reiterating the case of the proposed defendants, which is stated *supra*, would contend as follows:

The court below failed to appreciate the contention of the proposed defendants that they are necessary parties to the suit proceedings in order to enable the Court to effectively and completely adjudicate the *lis* and settle all the questions involved in the suit. The Court below ought to have allowed the petition, more particularly, when the proposed defendants had exclusive rights as regards the relief sought for in respect of some of the items of the suit schedule property. The court below had failed to see that the succession certificate referred to by the plaintiff and the 1st defendant in no way confers exclusive rights on them in respect of all items of suit schedule property. The court below erred in observing that the proposed defendants failed to prove their relationship with the other shareholders. The approach of the Court below in concluding that the presence of the proposed defendants is not necessary since no relief is claimed against them is unsustainable inasmuch as the reliefs sought by the plaintiff in certain items of the suit schedule property pertained to the rights of the proposed defendants. When the proposed defendants launched claim and brought to the notice of the Court, it is the duty of the Court to adjudicate and record findings on that aspect. The court below grossly erred in rejecting the request of the proposed defendants to be impleaded as party defendants driving the rightful owners to seek declaration of title by instituting a fresh suit, which is nothing but multiplicity of proceedings and prolongation of the *lis*.

5. The learned counsel appearing for the plaintiff and the other contesting defendants had supported the order of the trial Court.

6. I have noted the submissions. Though several documents were

referred to in the affidavit of the proposed defendants, no documents were exhibited on either side at the time of hearing of the interlocutory application by the trial Court. Therefore, the contents of the documents of the parties were not adverted to and not considered by the Court below. When an Interlocutory Application seeking impleadment is filed by third parties, the Court has to necessarily look into the documents of both the parties and examine the contents thereof to find out as to whether the pleadings find support from the recitals in the respective documents. Unless the earliest partition deed is looked into, it is not possible to know as to in respect of which properties covered by which parts of the schedule of the said partition deed, the suit is filed. Further, in the written statement of the 1st defendant it was alleged as follows: - 'The plaintiff, in the revision proceedings before the Joint Collector of Medak District had clearly contended that the shares of the remaining parties in the alleged partition deed were purchased by late Bala Shankaraiah during his life time as is evident from the Khasra Pahani and the Pahani for the year 1960-61 and consequentially all the lands were under the ownership and possession of late Bala Shankaraiah.' The above said sale deed referred to in the pleadings is not exhibited before the trial Court. The proposed defendants 52 to 59 filed a copy of the document no.1064 of 1347 Fasali (1937 AD) with a request to receive the same as an additional material paper. The plaintiff had filed a copy of the document bearing no.98/1347 Fasali and a copy of document no.1612 of 1354 Fasali along with a petition to receive the same. These documents are filed for the first time before this Court. Further, copies of the pleadings in OS.no.150 of 2008 are also filed by the proposed defendants as additional material papers. Respondent nos.27 and 28 herein filed a copy of an MOU dated 06.05.2013 and a copy of the Award passed in CC.no.182 of 2008 on the file of the Judicial Magistrate of I Class(Mobile Court) at Sangareddy as material papers on their side. These documents are also filed for the first time before this Court. The trial Court had no opportunity to look into these documents while passing the orders impugned in this revision. As already noted, even the documents filed are not exhibited; therefore, the said documents are not sent to this Court for consideration in this revision. No just decision as regards to the entitlement

of the proposed defendants to be impleaded in the suit and their *locus standi* and interest can be made without looking into the documentary evidence that is referred to in the pleadings and being sought to be relied upon by both the parties. In the light of the contentions urged by both the parties, it is necessary to refer to and carefully examine the recitals in the documents before coming to a just decision in the matter. Unless the documents filed by both the parties are exhibited, the documents will not be sent to this Court from the trial Court along with the lower Court records. Unless the documents are before this Court and are duly exhibited, it is neither possible nor is just and proper to appreciate the rival contentions. The trial Court ought to have allowed the parties to have their documents exhibited before disposing of the interlocutory application on merits. Even in a case where the parties failed to make a request to exhibit their documents for consideration in the interlocutory application, it is the duty of the Court to see that the necessary documents are exhibited. It is not a case where the parties specifically opted not to exhibit the documents for one reason or the other. Rule 60 of the Civil Rules of Practice says that the enquiry into an interlocutory application shall be conducted by receiving affidavits, but if the Judge directs that the evidence be given orally, then it shall be recorded and the exhibits be marked in the same manner as in the case of suits. This Court in a decision in **A.P. Minerals Development Corporation Limited Hyderabad v. M/s.Trimex Minerals Pvt.Ltd.**,^[1] and another decision in **T. Bhopal Reddy and another v. K.Lakshmi Bai and another**^[2] held that the practice of marking the documents in the interlocutory application only shall be continued. It is thus obvious that the documents filed by either of the parties shall have to be marked, unless the parties specifically opt for not marking either on the ground of inadmissibility or for some other reasons of their own. In these circumstances, it is just and proper to allow the revision and remand the matter to the trial Court for disposal of the IA afresh, on merits, after following the procedure established by law, which was adverted to supra.

7. In this revision, as already noted, both the parties have filed certain

documents for consideration. The parties are permitted to take return of the said documents and file them before the trial Court for consideration in the IA.

8. For the aforesaid reasons, the Civil Revision Petition is allowed and the order and the decretal order of the trial Court in I.A.No.343 of 2012 are set aside and the said IA is remitted to the trial Court with a direction to give an opportunity to both the parties to exhibit their respective documents and then dispose of the said application afresh, on merits and in strict accord with the procedure established by law. It is needless to say that this Court has not gone into the merits of the matter as the interlocutory application is being remitted to the Court below.

There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

1st June, 2016
Vjl

[\[1\]](#) 1998(1) ALT 182

[\[2\]](#) 1998(1) ALD 770