

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
CIVIL REVISION PETITION No.4338 OF 2010

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ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner/third party, aggrieved by the order dated 02.08.2010 passed in I.A.No.1015 of 2009 in O.S.No.218 of 2006 by the Principal Junior Civil Judge, Mangalagiri, Guntur District, dismissing the application filed under Order 1 Rule 10 r/w. Section 151 of C.P.C., and Rule 28 of the Civil Rules of Practice, seeking to implead him as 2nd defendant in the suit and for consequential amendment of the plaint.

The petitioner herein is a third party. The 1st respondent herein is the plaintiff and 2nd respondent herein is the defendant in O.S.No.218 of 2006 on the file of Principal Junior Civil Judge, Mangalagiri, Guntur District.

For the sake of convenience, the parties will hereafter be referred to as they are arrayed in O.S.No.218 of 2006.

The facts, in brief, are that the plaintiff filed suit O.S.No.218 of 2006 against the defendant for partition of the plaint schedule property to an extent of 35 square yards of house site, a partly thatched house and a partly asbestos sheet roofed house bearing Door No.6-41/2, situated at Ponnekallu Village, Tadikonda Mandal, Guntur

District. Pending the said suit, the petitioner/third party filed I.A.No.1015 of 2009 in O.S.No.218 of 2006 stating that the total property admeasuring 316 square yards and the houses therein originally belong to his father, by name Kotam Raju, who died long back. After the death of his father, the entire extent of 316 square yards devolved upon the petitioner and his seven brothers, but partition has not taken place between them till date. It is said, when partition of the said property has not taken place, much prejudice will be caused if he is not impleaded as a party-defendant in the suit.

The plaintiff filed counter affidavit denying the averments in the petition and contended that the property between the petitioner/third party and his brothers was partitioned long back and the main suit is filed for partition of 35 square yards, out of the total extent of 316 square yards, to which the petitioner is no way concerned and not a necessary party to the proceedings.

After hearing both sides, the Court below dismissed I.A.No.1015 of 2009 by order dated 02.08.2010. Aggrieved by the same, the present Civil Revision Petition came to be filed.

Heard learned counsel for the petitioner/third party and the learned counsel for the 1st respondent/plaintiff and perused the material on record.

During the pendency of the Civil Revision Petition, the petitioner/third party died and his legal representatives

were brought on record.

A perusal of the plaint as well as the written statement in O.S.No.220 of 2007 would show that the petitioner/third party along with others filed a suit for partition of the suit schedule property therein and the same is pending. It is to be noted that the subject matter of the property in dispute in the present suit i.e., O.S.No.218 of 2006 and the property in the suit O.S.No.220 of 2007 filed by the petitioner is one and the same. O.S.No.220 of 2007 filed by the petitioner/third party and others was dismissed by the Court below. Challenging the same, A.S.No.59 of 2013 was filed, which was allowed on 06.07.2015. Aggrieved by the same, a Second Appeal was preferred before this Court and the same is pending. Since the property in the present suit and the property in O.S.No.220 of 2007 is one and the same, it is just and proper that the petitioner be impleaded as a party-defendant in O.S.No.218 of 2006.

For the aforesaid reasons, this Civil Revision Petition is allowed setting aside the impugned order dated 02.08.2010 passed in I.A.No.1015 of 2009 in O.S.No.218 of 2006 and the petitioner is impleaded as a party-defendant in the suit O.S.No.218 of 2016.

As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE C. PRAVEEN KUMAR

18.03.2016.

Msr

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