

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P.No.3561 OF 2015

ORDER:

The revision petitioner is unsuccessful petitioner in I.A.No.43 of 2013 in the pending suit O.S.No.178 of 1989 on the file of the Junior Civil Judge, Sompeta, which is a suit for partition maintained by the sole plaintiff against original one defendant and subsequently, the 2nd defendant claiming as purchaser from the 1st defendant came on record on her application under Order 1 Rule 10 CPC and 3rd defendant no other than the husband of the plaintiff was also impleaded and from the death of the 3rd defendant, the legal representatives of 3rd defendant came on record under Order 22 Rule 4 CPC as defendants 4 to 7.

While the matter stood thus, since the 1st defendant also died pending suit, her legal representatives came on record under Order 22 Rule 4 CPC as defendants 8 to 11, who are not parties, to the present revision. The proposed defendant sought to be impleaded by the plaintiff, who is the 8th respondent to the impugned order of the lower court dated 03-08-2015 should have been shown as proposed 12th defendant so also as 12th respondent. There is thus a mistake in not so mentioned by ignoring the LRs., of the 1st defendant came on record already as defendants 8 to 11. By recording the same, the cause to seek impleadment of the proposed 12th defendant (sic 8th defendant) is that 8th defendant claims to have purchased the property from the 2nd defendant. It is needless to say that the 2nd defendant herself has purchased from the 1st defendant came on record either on the application of the plaintiff or on her own as the case may be. Once such is the

case and even the proposed 12th defendant purchased from 2nd defendant is not in dispute and Section 146 C.P.C. says what is the proceeding against a person equally binding on the representative or person claiming through. Order 22 Rule 10 CPC says that in the case of assignment or transfer of property pending suit, the assignee is personally entitled to come on record. In spite of seeking so by the proposed 12th defendant for coming on record, the trial court dismissed the application, which is subject matter of revision impugning said order of trial court. Unless the 12th defendant comes on record for any entitlement to claim any equities, pursuant to the sale deed even as a vendee *pendente lite* in the suit for partition to the extent possible of the schedule of the sale deed extent to the share of the 3rd defendant, if any, from whom title is claiming by 1st defendant and inturn by 2nd defendant or inturn by proposed 12th defendant.

However, at this stage, it is the submission of the learned counsel for the proposed 12th defendant that he is foregoing the equities and the dismissal order may be confirmed for not claiming any equities.

Accordingly, considering said submission, the revision is dismissed. No order as to costs.

Consequently, pending miscellaneous petitions, if any, shall stand dismissed.

Dr.JUSTICE B. SIVA SANKARA RAO

Dt.11.08.2016
Prv

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