

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.4160 of 2015

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ORDER:-

This Civil Revision Petition, under Article 227 of the Constitution of India, by the petitioner-5th respondent is directed against the orders dated 31.07.2015, whereby the learned Election Tribunal-cum-Principal Junior Civil Judge, Avanigadda dismissed I.A.No.230 of 2015 in Election O.P.No.2 of 2013 filed under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908.

2. I have heard the learned counsel appearing for the petitioner-5th respondent and the learned counsel appearing for the 1st respondent in the Election OP. The other respondents are stated to be not necessary parties. The parties shall hereinafter be referred to as arraigned in this revision.

3. I have perused the material record.

4. The Election OP was brought by the 1st respondent herein for declaring the declaration of the election of the 5th respondent/petitioner herein as the Sarpanch of Ramakrishnapuram by the 3rd respondent is void and for other reliefs. The 5th respondent, who is the successful or the elected candidate, filed the aforesaid interlocutory application for rejection of the Election OP filed by the 1st respondent herein solely on the ground that the Election Petition is liable for rejection for not impleading the Gram Panchayat as a party to the Election OP. The 1st respondent had resisted the said application stating that in view of the reliefs claimed in the Election Petition, the Gram Panchayat is

neither a necessary nor a proper party and that the petition is misconceived. On merits, the trial court/tribunal had dismissed the petition of the petitioner herein, who is the 5th respondent in the Election OP.

5. The learned counsel for the 5th respondent drawing the attention of this Court to the provision of Order VII Rule 11 of the Code and the relief claimed in the Election OP by the 1st respondent had contended that the Grampanchayat is a necessary party and that for not impleading such a necessary party, the Election Original Petition filed by the 1st respondent herein is liable for rejection. On the other hand, the learned counsel for the 1st respondent had contended that the 5th respondent herein filed the aforesaid interlocutory application before the trial court only to procrastinate the Election Original Petition, which is filed in the year 2013, and that the Gram Panchayat is not a necessary party in view of the reliefs claimed in the Election Petition and that even assuming for a moment that it is to be eventually held that the Grampanchayat is a necessary party, such a finding has to be recorded only after full fledged trial but not in the interlocutory application and that, therefore, the instant petition is misconceived and that, in the facts and circumstances of the case, the court below was perfectly justified in dismissing the petition of the 5th respondent. He would further submit that no provision of law is brought to the notice of the Court from the Andhra Pradesh Gram Panchayat Act, 1994 and the Rules made there under to show that the Gram Panchayat is a necessary party to the Election Petition.

6. I have noted the facts of the case and I have given earnest consideration to the submissions. I have carefully perused the Election Petition, particularly, the relief claimed in the Election Original Petition. The 1st respondent herein having filed the Election Original

Petition had requested in the relief portion of the said petition to issue notices to all the respondents arrayed in the Election Petition and to recount all the votes, after calling for the record from respondents 1 to 4, and to declare that the declaration given by the 3rd respondent that the 5th respondent is returned or elected as the Sarpanch of Ramakrishnapuram is void in law. As rightly urged by the learned counsel for the 1st respondent herein, the learned counsel for the 5th respondent could not bring to the notice of the Court any provision of law either under the above said enactment or the Rules made there under to show that the Gram Panchayat is a necessary party to the Election Original Petition of the present nature. The law is well settled that if the party is only a proper party, no petition shall be dismissed for non-joinder of such a proper party. However, if a party not impleaded is a necessary party, the said principle is not applicable. Further, in the well considered view of this Court, a reading of the Election Petition would indicate *prima facie* that the Gram Panchayat is not a necessary party to the *lis* in the facts and circumstances of the case and in view of the relief claimed in the Election Original Petition. A plain reading of order VII Rule 11 CPC also makes it apparent that the said provision is inapplicable to the facts of the present case. For the grounds aforementioned and in view of the fact that the order of the court below, which is justified, does not warrant any interference, this Court finds that the revision petition is devoid of merit and is liable to be dismissed.

7. In the result, the Civil Revision Petition is dismissed.

Considering the legal position and the fact that the Election OP is of the year 2013, the trial court/tribunal is directed to dispose of the Original Petition as expeditiously as possible and preferably within three months from the date of receipt of a copy of this order.

There shall be no order as to costs.

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

M. Seetharama Murthi, J

18th April, 2016

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