

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.2227 of 2015

ORDER:

This Civil Revision Petition, by the unsuccessful plaintiffs, under Article 227 of the Constitution of India, is directed against the orders dated 27.04.2015 of the learned Senior Civil Judge at Srikalahasti, passed in I.A.No.1861 of 2014 in O.S.No.36 of 2010 filed under Order I Rule 10 read with Order VI Rule 17 and Section 151 of the Code of Civil Procedure, 1908 ('the Code', for brevity) and Rule 28 of the Civil Rules of Practice requesting to permit the plaintiffs to add the proposed respondents 13 to 30 as defendants 13 to 30 in the suit for partition and consequently amend the plaint by including paragraph 6(a) after paragraph 6 in the plaint.

2. I have heard the submissions of the learned counsel for the revision petitioners/plaintiffs ('the plaintiffs', for brevity) and the learned counsel respectively appearing for respondents/proposed defendants 16, 17 and 19 and the respondents/proposed defendants 21, 23 to 30 ('the proposed defendants', for brevity). I have perused the material record.

3. To begin with, the facts necessary for consideration, in brief, are as follows:-

The plaintiffs brought the suit originally against the defendants 1 to 6 for partition of the plaint schedule property into 8 equal shares by metes and bounds and according to good and bad qualities and allotment of one such share each to the plaintiffs and the defendants. The said suit is being resisted by some of the said defendants. When the suit is at the stage of arguments, the 1st defendant had died. His legal representatives were brought on record as defendants 7 to 12. On the 8th defendant filing the written statement with all the details of the alienations and purchasers of the plaint schedule property, the plaintiff had filed the present application for impleadment of the said purchasers, i.e., the proposed defendants 13 to 30 as parties to the suit contending *inter alia* that the proposed defendants

having purchased the properties had acquired interest in the plaint schedule property and that therefore, they are necessary and proper parties. Some of the proposed parties and the contesting defendants had resisted the said application for impalement of the proposed parties and consequential amendment of the plaint. The Court below had dismissed the said petition of the plaintiffs.

4. The learned counsel for the plaintiffs having first pointed out from the pleaded defence of the defendants that they admit that the plaint schedule property is a joint family property and that they contend that there was an oral partition and a subsequent partition by a registered document and that they had sold the properties to the proposed defendants, would next contend that in view of the fact that the proposed defendants have admittedly purchased a part of the plaint schedule property, which is a joint family property, the plaintiffs are entitled to bring the said purchasers/proposed defendants on record to give a *quietus* to the litigation. He would also point out that even the Court below had observed in the impugned order that the vendees, i.e., the proposed defendants 13 to 30 need not be brought on record, as the 4th defendant's share can be adjusted towards the properties purchased by the said defendants, and would further submit that in view of the facts and circumstances of the case, it is necessary to permit the plaintiffs to implead the proposed defendants, as their presence is anyhow necessary even at the stage of final decree for working out equities.

5. The learned counsel appearing for the proposed defendants 16, 17 and 19 strongly contended that the application is highly belated and is not maintainable. The learned counsel appearing for the proposed defendants 21, 23 to 30, while supporting the orders of the Court below, and having drawn the attention of this Court to the written statement of the 3rd defendant in the suit, wherein, it is stated that the 4th defendant had sold his share to several individuals under agreements of sale-cum- deeds of power of attorney on different dates, i.e., on 15.09.2008, 24.09.2008 and 29.10.2008 would contend that inspite of stating the said fact in the written statement filed

long time back, i.e., in August 2010, the plaintiffs did not take any steps for impleadment of the said purchasers as defendants. He would also submit that the plaintiffs had filed the present petition for impleadment of the purchasers by showing as if they had come to know of the alienations only after the filing of the written statement by the 8th defendant; and that in the present application for impleadment, the plaintiffs have thus suppressed the fact that such a statement in regard to alienations was already made in the defence of the 3rd defendant; and that in view of the fact that the properties were already sold by the 4th defendant, the said proposed purchasers are not necessary and proper parties. The learned counsel had placed reliance on the decision of the Supreme Court in ***Y.B.Patil and others Vs. Y.L.Patil***^[1] in support of the contention that the principle of *res judicata* can be invoked not only in separate subsequent proceedings, but the said principle also gets attracted in subsequent stage of the same proceeding. He would also submit that in view of the fact that the plaintiffs were not diligent in seeking the amendment and the impleadment of the present purchasers at the earlier stage, their right to seek impleadment at this stage is barred by the principle of constructive *res judicata*.

6. I have bestowed my attention to the facts and I have given earnest consideration to the submissions.

7. As rightly contended by the learned counsel for the plaintiffs, the ratio in the aforementioned decision of the Apex Court is not applicable to the facts of the case on hand, as no order was passed earlier by the Court below dismissing an application like the one under consideration in this revision. It is pertinent to note that in a suit for partition filed by the plaintiffs against the defendants 1 to 6, who are their brothers and sisters, the 3rd defendant, in his written statement, had categorically stated that the pliant schedule property is a joint family property standing benami in the name of the mother and that the said property was purchased benami in the mother's name for the fear that the creditors might proceed against the same if it is in the name of the father

of the 3rd defendant. In the said written statement he had also stated that the best proof of the fact that the plaint schedule property is joint family property purchased benami in the name of the mother of the 3rd defendant by the father of the 3rd defendant with joint family money for the benefit of the joint family is that the 4th defendant and his three sons have jointly sold away the entire share out of the plaint schedule property that fell to the share of the 4th defendant to several individuals under agreements of sale-cum-deeds of powers of attorney on different dates, i.e., on 15.09.2008, 24.09.2008 and 29.10.2008. Drawing the attention of this Court particularly to the said averments, it is contended on behalf of the plaintiffs that such an admission would *prima facie* show that the plaint schedule property is a joint family property and is liable for partition. It is also contended that since the property is a joint family property, any partition, either oral or by registered documents, without the sisters/plaintiffs joining as parties, is not binding on the plaintiffs and that on the very admission in the written statement, the plaintiffs are entitled *prima facie* to claim a share in the plaint schedule property; and that since the proposed defendants 13 to 30 had purchased a portion of the plaint schedule property from the 4th defendant and his sons ignoring the rights of the plaintiffs, the plaintiffs are entitled to implead the purchasers; and that the presence of the said proposed defendants is also necessary, in any view of the matter, for working out equities at the time of final decree and allotment of shares, in view of the observation of the Court below in the impugned orders to the effect that the share of the 4th defendant can be adjusted towards the properties purchased by the proposed defendants 13 to 30. Per contra, the learned counsel appearing for the defendants mainly contended that the petition is liable for dismissal on the ground of delay as the present application was filed after the addition of the legal representatives of the deceased 1st defendant and not immediately after the written statement of the 3rd defendant was filed in August 2010 disclosing alienations.

8. While reiterating that the property is admitted to be a joint family property and that there is no partition either oral or otherwise amongst all the sharers,

the learned counsel for the plaintiffs would contend that any alienations of the property by any single sharer and his branch do not bind the plaintiffs and that the purchasers have to work out their rights by seeking equities, provided they are *bona fide* purchasers and such working out of equities is possible and permissible under facts and law. In the well-considered view of this Court, when substantive rights of the parties are involved, on the mere ground of delay, an application for impleadment cannot be rejected, more particularly, in the light of the fact that it is admitted that the suit property is joint family property and the observation of the Court below that the 4th defendant's share can be adjusted towards the properties purchased by the proposed defendants and as the presence of the purchasers as party-defendants may be necessary for working out equities at an appropriate later stage of the matter, subject, however, to the final decision of the Court below. The order of the Court below, which was passed without considering the vital aspects, therefore, calls for interference. Viewed thus, this Court finds that the order impugned is liable to be set aside.

9. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. Consequently, I.A.No.1861 of 2014 in O.S.No.36 of 2010 on the file of the Court below stands allowed as prayed for.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

M.Seetharama Murti, J

14th March, 2016
Bvv

[\[1\]](#) AIR 1977 Supreme Court 392