

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.1111 of 2010

ORDER:

This revision under Article 227 of the Constitution of India by the unsuccessful petitioner/3rd party/proposed 6th defendant is directed against the orders dated 17.11.2009 of the learned I Additional Senior Civil Judge, Guntur, passed in IA.No.669 of 2009 in OS.No.60 of 2004 filed under Order I Rule 10 of the Code of Civil Procedure, 1908, ('the Code', for short) requesting for permission to implead the petitioner as party 6th defendant in the suit.

2. I have heard the submissions of *Sri P. Gopal Das*, learned counsel for the revision petitioner/3rd party/proposed 6th defendant ('the proposed 6th defendant', for brevity) and *Sri G. Pedda Babu*, learned counsel for the 7th respondent herein/3rd defendant ('the 3rd defendant, for brevity). It is stated that the other respondents are not necessary parties. I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

3.1 The plaintiffs/respondents 1 to 4 herein brought the suit against the defendants, that is, the respondents 5 to 9 herein for a declaration that the plaint 'B' schedule property is the absolute property of late Anki Reddy and that on his death it devolved on his sons and grand sons namely the plaintiffs 1 to 4, defendants 1,2,4 and 5. In the said suit, the plaintiffs, alternatively, sought declaration of their title pursuant to the Will dated 25.11.2003 executed by late Anasuyamma and also a consequential relief of partition of the same into four equal shares and delivery of one such share to the plaintiffs 1,3 and 4 together and one such share to the 2nd plaintiff. In the said suit, the plaintiffs, *inter alia*, contended as follows: - 'Vaka Ankireddy is the father of the 1st plaintiff and the defendants 1 to 3 and the grandfather of the 2nd plaintiff. The said Ankireddy had four sons including the deceased father of the 2nd plaintiff, late Ramanareddy, and a daughter, the 3rd defendant. The plaintiffs 3 and 4 are the children of the 1st plaintiff. The 4th defendant is the son of the 1st defendant. The 5th defendant is the son of the 2nd defendant. Ankireddy acquired 750 Square yards of site in the 9th line, Arundelpet, Guntur. Out of the said extent, 350 Square yards was in his name and the remaining extent was

in the name of Myla Anasuyamma, with whom Ankireddy developed intimacy and whom he treated as his 2nd wife. The plaintiffs and the other children of Ankireddy were also treating her as their mother. Ankireddy purchased the said property in the name of Anasuyamma benami and was managing the property and paying taxes on the entire property. The said entire property is shown as plaint 'A' schedule property. Late Ankireddy executed a registered Will dated 24.05.1999 bequeathing 125 Square yards each to his sons namely 2nd plaintiff's father, Ramanareddy, 1st defendant, 2nd defendant and 1st plaintiff to be enjoyed by them during their lifetimes, however, giving vested remainder rights to their respective children with absolute rights. In regard to the remaining property no arrangement was made so that after lifetime of Anasuyamma the same would devolve upon his sons. The said remaining property is shown as plaint 'B' schedule property. Anasuyamma, who was living as a member of the family of Ankireddy, had also executed, a notarized Will dated 25.11.2013, in a sound and disposing state of mind, bequeathing 'B' schedule property in equal moieties to the sons of Ankireddy and the son of his deceased son i.e., the 2nd plaintiff. By virtue of the said Will,

the 2nd plaintiff was given absolute rights in respect of the property bequeathed to him; however, 1st plaintiff and defendants 1 and 2 were given rights to enjoy the property during their lifetimes and vested remainder rights were given to their respective children.' Thus, the suit is based on two Wills; one of Ankireddy and the other of Anasuyamma.

3.2 The 3rd defendant filed a written statement denying the plaintiff averments and *inter alia* stating that Kakarla Veeraiah, son of Pothu Raju of Sathuluru Village, is claiming to be the brother of late Myla Anasuyamma and that the 3rd defendant was fostered by Anasuyamma to the knowledge of the plaintiffs and the other defendants and that the 3rd defendant served the said Anasuyamma as a natural daughter and attended to her needs till she breathed her last and that the said Anasuyamma executed a notarized Will dated 20.11.2003 in a sound and disposing state of mind and that on the death of the said Anasuyamma on 03.12.2003 the 3rd defendant acquired rights in 250 Square yards out of 4530 Square feet in T.S.No.392 situate at Arundelpet, Guntur, morefully described in the schedule annexed to the written statement. Thus, the 3rd defendant relied upon a notarized Will dated 20.12.2003 also of Anasuyamma.

3.3 While so, the proposed 6th defendant who is the son of Kakarla Veeraiah filed the subject interlocutory application for his impleadment, *inter alia*, claiming that the aforementioned suit between the plaintiffs and the defendants is a collusive suit and that the plaint schedule property belonged to Anasuyamma and that she executed a Will dated 25.11.2003, in a sound and disposing state of mind, in favour of K. Veeraiah, the father of the proposed 6th defendant, and that on the death of Anasuyamma, the property devolved upon his father Veeraiah and that subsequently his father out of love and affection executed a Gift deed in the year 2005 in his favour and that he is in possession of the plaint schedule property and that as he has got right, title and interest in the said property he is a necessary and proper party and therefore, he is to be impleaded as a party 6th defendant in the suit.

3.4 The 3rd defendant/7th respondent herein while reiterating her defence in the written statement filed a counter resisting the application of the proposed 6th defendant. The plaintiffs/respondents 1 to 4 herein by a memo adopted the counter of the 3rd defendant.

3.5 By the orders impugned in this revision, the request of the proposed 6th defendant is rejected and he was not accorded permission for his impleadment as party 6th defendant in the suit.

3.6 Therefore, he filed this revision before this Court.

4. Before proceeding further, it is apt to note that the petition for impleadment filed by the proposed 6th defendant was dismissed by the trial Court on 17.11.2009. Subsequently, the plaintiffs and defendants in the suit requested the suit to be referred to Lok Adalat and amicably settled the matter before the Lok Adalat, on such reference. Accordingly, the suit was disposed of as per the terms of settlement, *vide* Award dated 02.12.2009 in L.A.Case No.1303/2009 passed by the Lok Adalat Bench constituted by the District Legal Services Authority, Guntur. After the said disposal of the suit by the said Award, the proposed 6th defendant filed this revision on 12.03.2010. Thus, as on the date of filing of this revision, the suit is not pending and was disposed of. Subsequent thereto, the proposed 6th defendant filed a writ petition in W.P.No.13628 of 2011 before this Court requesting to set aside the Award mainly contending

that in view of the decision of the Supreme Court in *Afcons Infrastructure Limited v. Cherian Varkey construction company Pvt., Ltd.*,¹ the suit in which parties have set up Wills and raised contentions and rival contentions that the Wills are forged and such suit involving serious allegations in regard to fabrication of documents is not a matter to be settled as per Alternate Dispute Resolution (ADR) procedure under Section 89 and that therefore the civil Court ought to have decided the issues involved in the suit particularly in regard to the genuineness or otherwise of the Wills relied upon by the parties since the suit falls under the excluded category of ADR and hence, the reference of the suit to the Lok Adalat by the civil Court is not valid and such reference is not in accordance with law and, therefore, the Award is liable to be set aside. Some other grounds are also urged in the writ petition.

5. In this factual background, the learned counsel for the proposed 6th defendant would contend that though this revision petition is filed after the disposal of the suit by a Lok Adalat Award, the revision petition is maintainable and that this revision petition is to be heard and decided along with

¹ (2010) 8 SCC 24

the writ petition filed for setting aside the Award, as in the event the writ petition is allowed by accepting his contentions, this revision is also to be incidentally allowed permitting him to contest the suit as he is a necessary and proper party and as his presence is necessary for effective adjudication of the suit. He would therefore request this Court to tag this revision with the writ petition for consolidation, hearing and disposal.

6. Per contra, the learned counsel for the 3rd defendant would submit as follows: The suit is originally filed for declaration and for an alternative relief of partition. Though both the parties relied upon Wills in their respective pleadings, they have preferred to amicably settle the matter before the Lok Adalat and therefore they made a request for reference of the suit to the Lok Adalat. The Court below having considered the facts and circumstances and after finding that the issue involved is amenable for resolution by ADR procedure, referred the suit to the Lok Adalat. Even before such reference of the suit was made to the Lok Adalat by the Civil Court, the application filed by the proposed 6th defendant for his impleadment as party 6th defendant was dismissed as his claim is based on an independent cause of

action and a Will set up by him on the basis that his father is the brother of the deceased Anasuyamma. Before the Bench of the Lok Adalat all the parties to the suit have amicably settled the matter and an Award was accordingly passed. As this revision petition was not filed by the proposed 6th defendant before the Award was passed and since neither the suit nor an appeal suit were pending by the time of the institution of this revision petition, the question of impleading a party after the disposal of the suit does not arise and therefore the CRP is liable to be dismissed as infructuous. He would further submit that the parties to the suit are contesting the writ petition and that even assuming for a moment that the writ petition comes to be allowed, the proposed 6th defendant can renew his request for his impleadment subject to the observations, if any, in the writ order, but he cannot continue to prosecute the revision petition, which is infructuous. He would also submit that since the proposed 6th defendant is also contending that the Award of the Lok Adalat is not binding on him on the ground that he is not a party to the suit and the Award, he can as well file a fresh suit on his independent cause of action based on his claim, if any, and the Will being relied upon by him, but,

he cannot seek his impleadment in the suit which was already disposed of. Though Wills were set up in the suit by the parties to the suit indeed, the parties, who are closely related, never wanted the genuineness of the Wills to be settled after resolution of any contentious issues by the Lok Adalat Bench but only wanted to have the subject matter settled amicably. Hence, the ratio in the Supreme Court decision is not applicable to the case on hand. Therefore, the contention that the ADR procedure is not applicable to the present suit is incorrect. The Award of a Lok Adalat is having the same status as that of a decree of a civil Court. The proposed 6th defendant is not precluded from filing an independent suit based on the Will being relied upon by him, but the proposed 6th defendant did not take any such steps. Therefore, the revision which has become infructuous need not be heard along with the writ petition.”

7. I have bestowed my attention to the facts and the submissions. The proposed 6th defendant wanted his impleadment as party 6th defendant in the suit and filed the subject interlocutory application, *inter alia*, stating that his father is the brother of late Anasuyamma and that she executed a Will in favour of his father and that his father out

of love and affection executed a gift deed in his favour. On resistance of his said application by the contesting parties to the suit, the same was dismissed on 17.11.2009. Later the parties to the suit made a request to the Court to refer the suit to Lok Adalat to enable them to amicably settle the matter. They never wanted either the Civil Court or the Lok Adalat Bench to decide any contentious issues including the issue about the genuineness or otherwise of any of the Wills referred to in their respective pleadings. According to the respondents, who are parties to the suit, the learned Judge, Civil Court, having examined the facts and on being satisfied that the subject matter is amenable for settlement by amicable means and also by ADR procedure, referred the suit and the parties to Lok Adalat Bench. After amicable settlement was arrived at and the terms are settled between the parties, the Lok Adalat Bench constituted by the District Legal Services Authority, Guntur, passed an Award in L.A.Case No.1303 of 2009 on 02.12.2009. Therefore, the suit has culminated in an Award which is having the status of a decree of a civil Court. However, the proposed 6th defendant filed a writ petition for setting aside the said Award on various grounds. It is not necessary in this

revision petition to advert to the issues that are raised for consideration in the writ petition and record any findings which will have bearing on the merits of the writ petition. Be that as it may.

8. The revision petitioner filed this revision after the disposal of the suit by an Award of the Lok Adalat is admitted. This Court, on 12.03.2010, while admitting this revision petition, granted interim stay as prayed for in CRP.MP.No.1519 of 2010 including trial of the suit and implementation of the order of the Lok Adalat pending disposal of the CRP. By the date of the said order, the suit is not pending before the Civil Court. Though the learned counsel for the proposed 6th defendant placed strong reliance in the decision in Afcons case (supra) that the reference of the suit between the respondents *inter se* is not a valid reference in view of the ratio in the said decision, the said aspect will have to be considered in the pending writ petition. Be that as it may. As rightly contended, once the suit stood disposed of by an Award of the Lok Adalat, the revision petition assailing an order dismissing the interlocutory application of the revision petitioner for his

impleadment is not maintainable and has become infructuous.

9. The learned counsel for the 3rd defendant placed reliance on a decision in *Anokhe Lal v. Radhamohan Bansal and others*² in support of the contention that when once the suit is disposed of, the revision petition filed by a 3rd party assailing an order refusing his impleadment becomes infructuous. The facts of the reported case would show that a landlord filed suit for eviction against the tenant, a partnership firm. On the death of a partner, his son filed an application for his impleadment and the same was dismissed. He then filed an application under Order 30 Rule 4. That application was also dismissed. However, the High Court allowed the said application though at the time of passing the order it was brought to the notice of the High Court that decree for eviction was already passed and that no suit or appeal was pending. In view of the above said facts, the Supreme Court considered the following question – ‘As no suit was pending either in the trial Court or in the appellate Court when the High Court took up the revision of the 1st respondent for argument what was the need or occasion to

² AIR 1997 SC 257

pass an order for impleading a person as a new party in the suit?’ and answered the said question holding that the revision should only have been dismissed as infructuous.

10. In view of the precedential guidance, the facts and the further fact that the revision petitioner-proposed 6th defendant can always renew his request for impleadment in the event of his success in the writ petition subject to the observations in the writ order that may be passed in the writ petition, this Court finds that the revision petition is devoid of merit and is liable for dismissal and no orders to tag this revision petition, which has become infructuous, along with the writ petition are required to be passed by keeping the revision petition pending.

11. Accordingly, the Civil Revision Petition is dismissed.

Miscellaneous petitions, if any, pending in this revision shall also stand dismissed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

01st November, 2016

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