

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No. 2068 OF 2015

ORDER:

This civil revision petition under Article 227 of the Constitution by the petitioner/third party is directed against the orders dated 31.12.2014 and 27.01.2015 whereby the Court below without entertaining the claim petition filed by the petitioner/third party in I.A.No.____of 2014 in I.A.No.1222 of 2008 in O.S.No.266 of 1998 returned the claim petition on the ground of maintainability.

2. I have heard the submissions of the learned counsel for the petitioner. I have perused the material record. The respondents 1 to 6 are the plaintiffs and the other respondents are defendants. Though notices are served on the said respondents, none appears.

3. The submissions of the learned counsel for the petitioner, in brief, are as follows:

The plaintiffs brought the aforementioned suit against the defendants for partition of the plaint schedule property therein.

A preliminary decree was passed. The plaintiffs had filed a petition in I.A.No.1222 of 2008 for passing a final decree in terms of the preliminary decree. In the above said final decree proceedings, the petitioner/third party had filed the instant petition (SR) No. ____ of 2014 under Order XXI Rule 47 of the Code of Civil Procedure, 1908 requesting to declare his title in respect of the claim petition schedule property *inter alia* claiming that the petitioner/third party acquired the said property by way of a registered settlement deed dated 12.04.1993 and that the plaintiffs and the defendants inspite of having knowledge of the said

settlement deed did not implead the petitioner/third party as a party defendant to the suit and that the preliminary decree was obtained by fraud and misrepresentation.

4. At the stage of registration of the application, the trial court having raised an office objection had returned the aforementioned unnumbered claim petition of the petitioner/third party. stating that the petition for passing a final decree is still pending and therefore the petitioner/third party has to explain as to how the petition is maintainable. When the petitioner presented the unnumbered application, the same was again returned with the same office objection. Therefore, the petitioner placed reliance on a decision of the Supreme Court in ***Sushila Devi v. Ran Veer Singh and another***^[1] and wanted to represent the petition.

5. However, according to the submissions now made before this Court, neither the office of the trial Court nor the trial Court received the petition when sought to be re-presented and that the trial court had refused to give an opportunity to the learned counsel for the petitioner to make submissions on the maintainability of the (claim) application inspite of a request made in that regard. In fact, the aggrieved petitioner had earlier filed W.P.No.4109 of 2015 before this Court. By an order dated 26.02.2015, this Court found that the writ petition is not maintainable as the complaint relates to improper functioning of a subordinate judicial officer and had accordingly dismissed the writ petition giving liberty to the petitioner to approach the appropriate forum. Hence, the present revision petition is filed.

6. From the facts borne out by the record and the submissions now made in the grounds of the revision petition, it is

obvious that the only grievance of the writ petitioner is that the trial court is not giving an opportunity of hearing to the learned counsel for the petitioner to make submissions on the maintainability of the unregistered (claim) application and is refusing to even receive the petition when re-presented and is thus failing to exercise the jurisdiction vested in it.

7. Having regard to the facts and the submissions, this Court is satisfied that the revision petition can be disposed of with appropriate directions.

8. In the result, the Civil Revision Petition is allowed directing the learned Principal Junior Civil Judge, Amalapuram, to receive on file the claim application of the petitioner/third party in I.A.No. (SR).No. of 2014 in I.A.No.1222 of 2008 in O.S.No.266 of 1998 and hear the learned counsel for the petitioner-third party on the maintainability of the said application and pass appropriate orders in strict accordance with the procedure established by law. It is made clear that the trial Court shall complete this exercise as expeditiously as possible and preferably within a month from the date of receipt of a copy of this order.

As a sequel, the miscellaneous applications, if any, shall stand closed.

There shall be no order as to costs.

JUSTICE M.SEETHARAMA MURTI

June 30, 2016

Note: -

The Registry is directed to return the original unnumbered claim

petition in I.A.(SR).No. of 2014 in I.A.No.1222 of 2008 in O.S.No.266 of 1998 on the file of the Principal Junior Civil Judge's Court, Amalapuram, filed along with this revision to the revision petitioner under proper acknowledgment for re-presenting the same before the trial court.

{B/o}

LMV

[\[1\]](#) (2009) 16 SCC 244