

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY
CIVIL REVISION PETITION Nos.1292 & 1295 of 2011

COMMON ORDER:

CRP No.1292 of 2011 is filed against the order dated 30-08-2010 in E.P.No.31 of 2008 in O.S.No.138 of 2004 and CRP.No.1295 of 2011 is filed aggrieved by the order dated 30-08-2010 in un-numbered E.A. (vide CFR.No.10793/2009) in the said E.P. passed by the learned Additional Senior Civil Judge, Narsaraopet.

In the said orders, the Court below has dismissed E.P. filed by the petitioner/plaintiff on the ground that 3rd J.Dr is not a party to the suit and that the petitioner has not filed any application under Order 21 Rule-50 of C.P.C. and the E.P. is filed without impleading 3rd J.Dr and since the main E.P. is dismissed, the aforesaid un-numbered E.A. seeking leave to the petitioner to proceed against the 3rd J.Dr, was rejected.

Sri G.Pedda Babu, learned counsel for the petitioner submits that the trial Court has to consider the petition filed in C.F.R.No.10793 of 2009 at the first instance and then only E.P. should have been considered. But the trial Court while dismissing the E.P. rejected the un-numbered E.A. filed seeking leave to proceed against the 3rd J.Dr.

On the other hand, Sri N.Sri Rammurthy, learned counsel for respondent No.3, submits that even if Execution Petition is entertained, Execution Application is not maintainable, the application has to be filed in the main suit and not in the E.P.

A reading of Order 21 Rule 50 (2) C.P.C. goes to show application has to be filed in the suit. As such, I am in agreement with the submissions of the learned counsel for the 3rd respondent. As such I see no error in the order of the Court below. However, it is open for the petitioner to make an application under Order 21 Rule 50(2) C.P.C. in the suit and as and when such application is made, the Court below shall consider the same in accordance with law.

With the above observations, the Civil Revision Petitions are dismissed. As a sequel to the disposal of these revisions, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

03-02-2016
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