

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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Civil Revision Petition No.4411 of 2015

ORDER:

Heard Sri Mohd. Asifuddin, Learned Counsel for the petitioner. Despite service of notice, neither are respondents 1 to 6 present nor is there any representation on their behalf. This revision, under Section 115 CPC, is filed against the order passed by the XII Additional District Judge, Visakhapatnam in I.A.No.12 of 2013 in A.S.No.134 of 2011 dated 16.07.2015.

I.A.No.12 of 2013 in A.S.No.134 of 2011 was filed by the petitioner-plaintiff, under Order 1 Rule 10 CPC, praying that the proposed parties, who were the daughters of the 3rd respondent, be arrayed as respondents 4 to 6 in the Appeal. The petitioner-plaintiff filed the Suit in O.S.No.345 of 2006 against respondents-defendants 1 to 3 for partition of A, B and C schedule properties into four shares; and to allot one such share to him. A preliminary decree was passed granting him a share in C-schedule property. The petitioner's claim for a share in A and B-schedule properties was, however, negated. Aggrieved thereby, the petitioner preferred an appeal, against the said judgment and decree, in so far as A and B-schedule properties were concerned. He also filed I.A.No.2367 of 2011 seeking temporary injunction restraining the respondents from alienating the suit schedule properties to third parties pending disposal of the appeal. In the counter-affidavit filed thereto, the respondents did not state that the properties were already alienated.

Before the Court below, the petitioner contended that the 3rd respondent had executed a gift deed in favour of his three daughters in respect of the B-schedule property before the Appeal was preferred; and she had mortgaged A-schedule property in favour of Sri V.Rajanikanth on 12.01.2009.

In the order under revision, the Court below noted that the

petitioner had not impleaded the mortgagee; he had sought to implead only the three daughters of the 3rd respondent in whose favour the 3rd respondent had gifted B-schedule property; the said property was gifted by way of a registered deed dated 18.07.2011, after passing of the preliminary decree and before preferring the Appeal; in a Suit for partition, while passing a preliminary decree, the entitlement of a party to a share in the suit properties is determined; if the sharers are not impleaded, the Suit is then liable to be dismissed for non-joinder of necessary parties; the proposed parties are not sharers and the 3rd respondent, who gifted the schedule properties, was shown as a sharer in the Suit; the proposed parties were transferees pendente lite, and could not be said to be necessary parties; at best they may be proper parties; their right under the gift deed was subject to the result of the Suit; as the interest of the proposed parties were being taken care of by the 3rd respondent, who was none other than the mother of the proposed parties, the Suit could be effectively decided even in the absence of the proposed parties; the presence of the proposed parties i.e. transferees pendente lite was not necessary for complete, effective and adequate adjudication of the dispute; the proposed respondents 4 to 6 were not necessary parties either to the Suit or to the Appeal as, even in their absence, the Suit could be decided; and the application was liable to be dismissed.

Before this Court Sri Mohd.Asifuddin, Learned Counsel for the petitioner, has placed reliance on the judgment of the Supreme Court, in **Dhanalakshmi v. P.Mohan**^[1], to submit that the donees (proposed respondents 4 to 6) under a gift deed, whereby a part of the suit schedule properties was gifted in their favour, are necessary parties both to the Suit and to the appeal. In **Dhanalakshmi**¹, the application, filed under Order 1 Rule 10 CPC by the purchaser of the suit schedule property, was rejected. After referring to Section 52 of the Transfer of Property Act, 1882, the Supreme Court observed:-

“.....Section 52 deals with a transfer of property pending suit. **In the instant case, the appellants have admittedly purchased the undivided shares of the respondents nos.2,3,4 & 6. It is not in dispute that the first respondent P. Mohan has got an undivided share in the said suit property. Because of the purchase by the appellants of the undivided share in the suit property, the rights of the first respondent herein in the suit or proceeding will not affect his right in the suit property by enforcing a partition. Admittedly, the appellants, having purchased the property from the other co-sharers, in our opinion, are entitled to come on record in order to work out the equity in their favour in the final decree proceedings. In our opinion, the appellants are necessary and proper parties to the suit, which is now pending before the Trial Court. We also make it clear that we are not concerned with the other suit filed by the mortgagee in these proceedings....”.**

The Order 1 Rule 10 CPC application, in **Dhanalakshmi¹**, was filed by the transferee of the Suit schedule property, and the Supreme Court observed that the purchaser of the property was a necessary and proper party to the Suit. In the light of the law declared in **Dhanalakshmi¹**, an application filed to implead the donee of the suit schedule property, in a suit for partition, ought not to have been rejected. The order under revision is set aside, the petitioner’s application in I.A.No.12 of 2013 in A.S.No.134 of 2011 is allowed, and respondents 4 to 6 herein shall be arrayed as respondents 4 to 6 in A.S.No.134 of 2011.

The Civil Revision Petition is, accordingly, disposed of. The Miscellaneous Petitions, if any pending, shall also stand disposed of. No costs.

(RAMESH RANGANATHAN, J)

Date:29.01.2016.
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^[1] AIR 2007 SC 1062