

HON'BLE SRI JUSTICE S.V. BHATT

C.R.P.No.2437 OF 2016

ORDER:

The plaintiffs in O.S.No.156 of 2014 in the Court of the Additional Senior Civil Judge, Kurnool are the revision petitions.

The revision is directed against the order dated 04.03.2016 in I.A.No.371 of 2014 in O.S.No.156 of 2014. The 1st respondent herein filed I.A.No.371 of 2014 to implead her as 2nd defendant in O.S.No.156 of 2014. The trial Court through the order impugned in the revision allowed the prayer for impleadment. Hence, the revision.

Heard Sri V.L.N.G.K.Murthy for revision petitioners and Mr.V.Dattatreya Goud for 1st respondent.

Revision petitioners filed O.S.No.156 of 2014 to declare them as the legal heirs of late Sivasankar Reddy and also as successors to the mining leases held by late Sivasankar Reddy for plaint schedule property.

The 1st respondent herein claims to be the daughter of late Chinna Subba Reddy and sister of late Sivasankar Reddy. According to 1st respondent, she is one of the legal heirs to the leases held and enjoyed by late Sivasankar Reddy. It is submitted that she was arrayed as one of the parties in O.S.No.1 of 2005 filed by revision petitioners herein for partition and separate possession of the plaint schedule properties mentioned therein.

The subject leases are one of the items of suit schedule in O.S.No.1 of 2005.

The revision petitioners opposed the prayer of respondent to come on record as 2nd defendant.

The trial Court framed the following point for consideration:

“Whether the petitioner/proposed party can be impleaded as defendant No.2 in the suit as prayed for?”

The trial Court, after considering the earlier litigation between the parties, the relief prayed for in the instant suit and the request of respondent to come on record as defendant, answered the point as follows:-

“Though the present petitioner was added as a party to the Writ Petition No.12441 of 2010, the respondents No.1 to 3 did not implead her as a party to the present suit, in spite of seeking the relief of declaration as the legal heirs of the deceased Siva Sankar Reddy. There is no dispute regarding the fact that late Thirupalamma, being the mother of the deceased Siva Sankar Reddy, is one of his legal heirs apart from the present respondents No.1 to 3. Since the petitioner is seeking right by virtue of the Will said to have been executed by late Thirupalamma, her rights have to be considered and decided, while deciding the relief sought in the suit. In the absence of the petitioner, an effective decree cannot be passed and her rights and claim would suffer, if the suit is decided in her absence. The decisions relied upon by the respondents No.1 to 3/plaintiffs are not applicable to this petition, as the said cases dealt with the suits for specific performance of the contract of sale, while the present suit itself is for declaration of the plaintiff as the legal heirs of the deceased Siva Sankar Reddy.

So, in view of the above discussion and upon considering the relief sought in the suit, and the claim of the petitioner herein, this Court is of the opinion that the present petitioner is a necessary party to decide the relief sought in the suit. Therefore, this Court concludes and holds that the petitioner/proposed party can be permitted to come on record as the defendant No.2 in the suit. No prejudice will be caused to the respondents No.1 to 3/plaintiffs, if the petitioner is added as the defendant No.2 in the suit, as the entire dispute between them can be decided in the present suit itself, and it will avoid the prolongation of litigation and the multiplicity of proceedings between them.

Hence, the point is answered in favour of the petitioner/proposed party.”

With the assistance of counsel appearing for the parties,
I have perused the order passed by this Court as well as the decree and judgment in O.S.No.1 of 2005.

The suit schedule in O.S.No.156 of 2014 is one of the schedule items in O.S.No.1 of 2005. The parties claiming right to the properties left behind by late Chinna Subba Reddy and late Sivasankar Reddy have been

arrayed as parties and the rights have been worked out. Though an attempt is made by Mr.V.L.N.G.K.Murthy counsel for the petitioners to convince this Court that the respondent cannot and could not be impleaded as one of the defendants to suit, for the respondent if at all is entitled to any right in the leases held by late Sivasankar Reddy, ought to have worked out relief by filing a suit. Since the respondent has failed to do anything in that direction, the revision petitioners are justified in arraying only the State/Assistant Director of Mines and Geology as sole defendant and proceeding to work out their prayers. It is admitted that one of the reasons for instituting the instant suit is for 2nd respondent herein called upon the claimants before him to obtain order from the civil Court for considering their claim. It does not mean that the revision petitioners without the presence of alleged rival claimants can pursue their legal remedies and thereafter, subject to the outcome of the suit, claim the right in leases for suit schedule property. Further, the items covered by the leases are shown as one of the items in O.S.No.1 of 2005 and the respondent herein is also one of the defendants in O.S.No.1 of 2005. Any expression beyond the above consideration will prejudice the contest between the parties. This Court is in agreement with the findings recorded by the trial Court.

The revision fails and is accordingly dismissed. There shall be no order as to costs.

Consequently, pending miscellaneous petitions, if any, also stand closed.

S.V.BHATT, J _____

Date: 17.08.2016

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