

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**C.R.P.No.5850 of 2016****ORDER:**

Heard the learned counsel for the petitioner.

2. This Civil Revision Petition is filed challenging the order dt.06-09-2016 in I.A.No.332 of 2016 in O.S.No.39 of 2008 of the VII Additional District Judge, West Godavari District, Eluru.

3. Petitioner is a third party to the suit. Respondent Nos.1 to 3 filed the said suit against respondent Nos.4 to 6 for partition of the plaint schedule property and for allotment of the separate shares to them.

4. The petitioner claims to be the natural born sibling of 4th respondent and 5th respondent. He contends that though he was given in adoption to one Subbanna, the father of respondent Nos.4 and 5, Srinivasa Rao, who is also his natural father, executed a Will on 15-05-2007 in respect of an extent of Ac.0.30 cts in R.S.No.628/1A of Ananthapalli village, Nallajerla Mandal and an R.C.C. building upstairs Door No.7-117 along with other properties, that subsequently he died and since the above properties are mentioned in item-1 of the plaint schedule in the suit filed by respondent Nos.1 to 3, he should be impleaded as a party herein.

5. This application was opposed by respondent Nos.1 to 3 contending that the Will set up by the petitioner is a forged and

fabricated one and cannot be relied upon. It is stated that the petitioner is seeking to get impleaded only to protract the proceedings and he cannot be allowed to come on record since he admittedly went in adoption to another family. It is also stated that respondent Nos.1 to 3 are the *dominus litis* and it is choice of the respondent Nos.1 to 3 to decide against which party they would litigate and they cannot be compelled to litigate against petitioner.

6. By order dt.06-09-2016, the Court below dismissed the said application on the ground that the petitioner had never contended that he is in possession of the properties, that if he is impleaded, the respondent Nos.1 to 3/plaintiffs would be compelled to contest against him and the matter has to be once again conducted from the beginning. It held that the matter is coming up for evidence of defendants and if the petitioner is impleaded, he would again have opportunity to cross examine of the plaintiffs' witness after receiving his written statement resulting in a *de novo* trial. It however held that if he has any grievance, he can avail his remedies as per law.

7. Challenging the same, this Revision Petition is filed.

8. Learned counsel for the petitioner contended that the Court below should have impleaded the petitioner as a party in the suit in view of the claim of the petitioner that he is interested in the above property which is subject matter of the suit. He contended that if the petitioner is not impleaded and the said properties are also allowed to

be divided among the respondents, grave and irreparable loss will be caused to the petitioner.

9. Admittedly, Will in question set up by the petitioner was executed in 2007 allegedly by Srinivasarao, the father of respondent Nos.4 and 5 and it came into force in 2008 on his death. For the previous eight years, the petitioner has not produced the Will anywhere. His claim to the above properties which are subject matter of the present suit on the basis of the Will set up by him, in my considered opinion, ought to be considered in a separate proceedings to be initiated by the petitioner after paying the requisite Court Fee. If he is impleaded in the present suit, it would not only change the scope of the suit but would practically result in *de novo* trial from the scratch and this would further delay in disposal of the suit O.S.No.39 of 2008.

10. Therefore, I am of the opinion that the Court below was right in not allowing the petitioner to be impleaded in the present suit. It is made clear that any adjudication in respect of the property claimed by the petitioner in O.S.No.39 of 2008 by the Court below will not bind the petitioner and the petitioner has liberty to initiate fresh proceedings to establish his claim in respect of the said property on the basis of the Will. No costs.

11. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 19-12-2016

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