

THE HONOURABLE MR JUSTICE VILAS V. AFZULPURKAR

CIVIL REVISION PETITION No.236 of 2016

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ORDER

Heard learned counsel for the petitioners and Sri Akkam Eswar, learned counsel for the first respondent.

2. Petitioners seek to come on record as proposed respondents 7 to 9. They filed I.A.No.350 of 2015 in O.S.No.104 of 2011 on the file of Senior Civil Judge, Puttur, seeking their impleadment, but the said application was dismissed on 19.11.2015 under the impugned order. Petitioners state that they came to know the pendency of the present partition suit and immediately they filed the application as they claim the property through the first defendant's mother on the basis of the registered sale deed dated 27.08.1981, pattadar passbooks, title deeds as well as adangals and 1-B extracts showing their title. Since part of the plaint schedule property is claimed to have been purchased by the petitioners, they claim to be necessary and proper parties. However, the trial Court rejected the application on the ground that third parties' claim cannot be adjudicated in the present suit and as such, the third parties cannot be impleaded.

3. Though the learned counsel for the respondents supports the impugned order, I am unable to sustain the same. *Prima facie*, it appears that the vendors of the petitioners are the grand mother and the mother of the plaintiff and defendants 1 to 4 and the property purchased by the proposed parties under the registered

sale deed dated 27.08.1981 is stated to be the part of the plaint schedule. Hence, the proposed parties are necessary and proper parties for complete adjudication of the partition suit pending before the trial Court. However, the suit is of the year 2011 and is stated to be at the stage of evidence of the defendants. The impleadment of the petitioners would undoubtedly delay the disposal of the suit, but in order to minimize the delay, the following order is passed;

(i) the Civil Revision Petition is allowed by setting aside the impugned order and I.A.No.350 of 2015 shall stand allowed and the petitioners shall be impleaded as defendants 7 to 9;

(ii) the petitioners shall file their written statements along with the documents within four weeks from today, failing which the Court below is at liberty to set them *ex parte* and proceed with the trial;

(iii) if the written statements and the documents are filed accordingly, the first respondent/plaintiff is at liberty to file rejoinder, if any, within two weeks after service of the written statements;

(iv) the trial Court shall frame appropriate issue with regard to the claim of defendants 7 to 9, if required;

(v) the trial of the suit shall thereafter proceed in accordance with law and after completion of the evidence of the defendants, defendants 7 to 9 are at liberty to make appropriate request before the trial Court for recalling any of the witness examined before their impleadment, however, on such request, if considered by the trial Court, defendants 7 to 9 shall avail the said

opportunity within four weeks period and thereafter, the suit shall proceed to the next stage.

No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand closed.

VILAS V. AFZULPURKAR, J

26th February, 2016

Note:

Issue CC in three days

(Bo)

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