

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

CIVIL REVISION PETITION No. 785 of 2016

ORDER:

This Civil Revision Petition is filed, under Article 227 of the Constitution of India, against the order dated 27.08.2014 in I.A.No.206 of 2013 in O.S.No.318 of 2011 on the file of the Principal Junior Civil Judge, Nandyal, wherein the petition filed by the petitioner, under Order I Rule 10 r/w Section 151 of C.P.C., seeking to implead her as 2nd defendant in the above suit, was dismissed.

The case of the petitioner is that she is the owner of the petition schedule property having acquired the same by virtue of a registered Gift Deed dated 27.07.2010 executed by her father, who is 2nd respondent herein and defendant in the suit. Her father got the said property under a Partition Deed dated 04.10.1971 effected in between her father and his two brothers. By suppressing the said fact, the 1st respondent filed the above suit against the 2nd respondent without impleading her as a party to the suit. It is also her case that though her father disclosed the facts in his written statement, the 1st respondent neither filed a rejoinder nor evinced any interest to implead her as a party to the suit. The 1st respondent paid the rent to her @ Rs.12,500/- per month with effect from 27.07.2010 till May, 2011. In view of the above and to avoid multiplicity of proceedings, she was constrained to file the application seeking to implead her as 2nd defendant in the suit. The 1st respondent filed a counter while admitting that he took the plaint

schedule property from the 2nd respondent/defendant under an oral agreement of lease dated 14.08.2008. He contended that since the date of lease, he has been paying the rent to the 2nd respondent regularly. When the 2nd respondent refused to receive the rent, he has been depositing the rent in the Court without any default, as per the orders of the Court below dated 03.01.2013 in I.A.No.1272 of 2011. Therefore, he sought for dismissal of the application. The 2nd respondent/defendant was *set exparte*. Having heard both parties, the Court below dismissed the application by an order dated 27.08.2014. Aggrieved by the same, the petitioner filed the present revision.

Learned counsel for the petitioner submits that the 2nd respondent has executed a registered Gift Deed dated 27.07.2010 in favour of the petitioner and the written statement filed by the 2nd respondent discloses the said fact, and though the 1st respondent is aware of the same, he did not evince any interest to implead the petitioner as 2nd defendant in the suit.

On the other hand, learned counsel for the 1st respondent submits that it is for the 1st respondent to choose against whom the suit has to be fled and the petitioner has no right to come on record as it is a suit *simpliciter* for injunction and not for declaration of title. He also submits that the petitioner can file a separate suit claiming her rights.

In this case, it is to be seen that the trial Court dismissed the application only on the ground that the petition schedule property and the suit schedule property are not tallying with

each other. When the 2nd respondent specifically pleaded in his written statement that he has gifted the property to her daughter, the petitioner herein, by a registered Gift Deed dated 27.07.2010, it is for the 1st respondent to implead the petitioner as 2nd defendant in the suit, though it is a suit simpli citer for injunction. Further, the 1st respondent has not shown any interest to file rejoinder to the written statement denying the same. Instead, the petitioner herself filed the application to protect her rights and also defend the injunction suit. It is also not the case of the 1st respondent in the counter that the petition schedule property and the suit schedule property are not one and same. This aspect can be decided during trial of the suit. By mere allowing the application for impleadment, no rights are decided and the rights of the petitioner over the property can be decided in the suit itself. In view of the above and in order to avoid multiplicity of litigation, I feel that the presence of the petitioner in the suit is necessary for adjudicating the lis in the suit. Therefore, the impugned order is liable to be set aside.

Accordingly, the Civil Revision Petition is allowed and the order dated 27.08.2014 passed by the Principal Junior Civil Judge, Nandyal, in I.A.No.206 of 2013 in O.S.No.318 of 2011 is set aside and the said application is allowed. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any, pending in the revision petition shall also stand dismissed.

A. RAJASHEKER REDDY, J.

1st April, 2016
cbs

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