

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P.No.5947 OF 2007

AND

C.R.P.No.50 OF 2013

COMMON ORDER :

The suit filed by the plaintiff is for partition of the plaint schedule properties and for allotment of share of 22% in the suit properties along with share of defendants 1 to 3 at equal rate and 12% to the 4th defendant and pass preliminary decree to work out the rights thereunder by final decree proceedings and for a claim of Rs.64,000/- towards recovery of rent and mesne profits jointly and severally from defendants 1 to 4 and future profits and costs.

2. Defendants 2, 3 and 4 having filed their written statement, sought a counter claim to include the share in a partnership firm to which some of the claimants are entitled to be included as part of the plaint schedule by considering the counter claim to decide herein.

3. Against which (i.e. for the counter claim sought to be decided along with the plaint), I.A.No.173 of 2007 was filed by the plaintiff saying that the subject matter of the claim sought herein is not connected with the subject matter of the suit schedule property and it requires to be dealt by filing a separate suit and the matter regarding the partnership firm cannot be decided in the suit for partition and cause of action for both the matters is distinct, and if that is being included, it also increases the pecuniary jurisdiction to take away from the Court (Senior Civil Judge, Nirmal) and the counter claim is also barred by limitation, apart from there is an arbitration agreement for settlement of disputes arising out of the

same between the parties *inter se*.

4. Defendant No.3 filed counter affidavit for himself and for other defendants 4 to 10 in support of the counter claim.

5. The lower Court ultimately passed order saying that the subject matter of the counter claim is not at all connected with the subject matter of the suit properties and the same can be decided only by a separate suit in relation to the partnership firm and its affairs, and not in the present suit for partition of the property sought by the plaintiff and further from there is an arbitration clause.

6. Impugning the same, the present revisions are filed by defendants 2 to 4, who sought the counter claim.

7. The contentions in the revision are that the lower Court grossly erred in allowing the application filed by the plaintiff in I.A.No.173 of 2007 in not permitting the counter claim to be included in the suit claim to be decided with and the same is unsustainable as the counter claim includes various other relevant aspects, apart from dissolution of firm and rendition of accounts and thereby the order of the lower Court is liable to be set aside.

8. Coming to C.R.P.No.50 of 2013, it is out come of the docket order dated 27.07.2012 wherein during the course of evidence of DW2, when sought to mark some documents in relation to the so called counter claim, objection is raised by the plaintiff saying the counter claim sought to be included when already rejected by allowing the application in I.A.No.173 of 2007, again attempt to adduce evidence in relation to it in the suit is unsustainable, that too without jurisdiction and for separate suit in respect of the

counter claim in O.S.No.25 of 2007 is filed pending and that too only defendants 2 and 3 filed counter claim and not all the defendants and the documents thereby not at all relevant with observation of remedy is separate suit and that is already pending and the objection raised to receive the counter claim already sustained and thereby posted for marking any other documents by order dated 27.07.2012 to 03.08.2012.

9. Same is impugned by defendants 2 to 4 with the contentions in the grounds of revision that the documents sought to be marked are vital for comprehensively deciding the partition suit O.S.No.7 of 2006 and the plaintiff deliberately excluded the properties which are sought to be covered by the documents sought to be marked and the trial Court ought to have been received and exhibited the documents on their side. Hence to set aside the docket order, so as to adduce evidence in relation to those documents covered by the so called counter claim.

10. Heard both sides in both the revisions and perused the material available on record.

11. Dismissal of the counter claim, by allowing the application of the plaintiff not to receive the counter claim as per orders dated 01.08.2007 in I.A.No.173 of 2007 is not in dispute and the same is subject matter of C.R.P.No.5947 of 2007. When such is the case, unless C.R.P.No.5947 of 2007 is disposed of by allowing, the question of marking the documents in relation to that non receiving counter claim before the trial Court during the evidence of DW2 does not arise thereby the docket order holds good. No doubt subject to the result of C.R.P.No.5947 of 2007.

12. Now coming to C.R.P.No.5947 of 2007 undisputedly there is an arbitration agreement in relation to the partnership firm affairs between the parties *inter se*. Even from the very say, all the parties to the suit for partition including all defendants are not the beneficiaries of the entire partnership firm affairs to have the share therein and that too it is a subsisting firm and relief to be sought is for dissolution of the firm and for rendition of accounts and after distribution of other liabilities from assets if any, the entitlement for those, who are beneficiaries under that partnership firm to its assets for ultimate distribution with any profits or loss that could arise. Thereby the lower Court, also for the reason of already suit O.S.No.25 of 2007 is filed for dissolution of partnership firm, rendition of accounts and distribution of assets, when rightly rejected such contention and allowed the plaintiff's application not to receive the counter claim, for this Court while sitting in revision, also from the clause of arbitration in relation to the affairs of the partnership firm between the parties *inter se*, there is nothing to interfere within the limited scope by sitting in revision. Equally, from such is the case, even in C.R.P.No.50 of 2013 against the impugned docket order dated 27.07.2012 for what are the documents sought to be exhibited, are not connected undisputedly with the suit for partition, but for the alleged claim in relation to the partnership firm.

13. Accordingly, both the revisions are dismissed without prejudice to the contest of both parties in the suit for dissolution of partnership firm and other reliefs claimed in O.S.No.25 of 2007. No costs.

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

11.08.2016

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HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

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