HONOURABLE SRI JUSTICE A.RAMALINGESWARA RAO

C.R.P.No.558 of 2016

ORDER:

1. The petitioners are plaintiffs in O.S.No.51 of 2012 on the file of the Special Sessions Judge-cum-VII Additional District and Sessions Judge, Mahabubnagar, who is in charge of the IX Additional District Judge, Wanaparthy. The said suit was filed for partition and separate possession of the plaintiffs share in the suit scheduled lands. The evidence in the said suit was completed on 28.02.2015. The petitioners filed I.A.No.65 of 2015 on 05.02.2015 for impleading the proposed party as defendant No.41 to the suit proceedings. In the affidavit filed in support of the said application, it is stated that the 17th defendant, who was examined as D.W.2, filed Exs.B3 and B4/sale deeds, which discloses that he sold the property to the proposed party (Defendant No.41). In those circumstances, they sought impleadment.

2. A detailed counter-affidavit was filed by respondents 18, 19, 20, 23 to 27, 30 to 35 and 37 to 40. The 17th defendant did not file any counter-affidavit. The trial Court dismissed the application with the following observations on 19.11.2015:

> "On perusal of the evidence on record, it is also patent that the scheduled properties were sold by some of the defendants to several persons and all of them are not made parties to the proceedings. Petitioners are filing applications one after other in a piece meal delaying the matter as contended by the respondents/defendants and it is also patent from the notes paper. As submitted by the defendants no consequential amendments are shown in the petition as required under Rule 28 of C.P.C. The petition is defective. It is also not out of place to mention that this is a suit of 2012 and evidence was closed on 28.02.2015. Though the case is ripe for disposal in view of application filed by the petitioners/plaintiffs belatedly the matter remained pending though it is identified case in the previous term. Under the amendment C.P.C., party shall not be permitted to amend the pleadings after the commencement

> of the trial and any amendments shall be before the commencement of the trial. Conduct of the petitioners/plaintiffs in not making efforts to bring on record the vendees of 17th defendant in spite of written statement filed by him taking to the notice of the plaintiffs about the alienation throws doubt on their *bona fides* in filing the application belatedly. Petitioners failed to explain the delay and also failed to give reasons as to the necessity of proposed party to array him as 41st defendant. Affidavit enclosed to the petition is drafted even without verifying the evidence on record. In the aforesaid circumstances, I see no reason to entertain the application at this belated stage as this petition has no merits."

3. It is clear from the impugned order of the trial Court that the suit is coming up for arguments and at that stage the proposed party is sought to be impleaded as defendant No.41 on the ground that he purchased the property from defendant No.17; that the proposed party would get the rights of the 17th defendant and that the 17th defendant was already examined as D.W.2. In the circumstances, the presence of the proposed party (defendant No.41) is not necessary in a suit for partition and separate possession as the 17th defendant was contesting the suit by filing a written statement. Therefore, this Court finds no error in the order passed by the trial Court.

4. Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

5. Miscellaneous petitions, if any, pending shall stand closed.

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A.RAMALINGESWARA RAO, J

19-02-2016
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