

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.1203 of 2016

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, by the unsuccessful petitioners/third parties is directed against the orders, dated 26.02.2016, of the learned Senior Civil Judge, Hindupur, passed in I.A.No.455 of 2014 in O.S.No.118 of 2009 filed by the third parties under Order 1 Rule 10 of the Code of Civil Procedure, 1908, requesting to implead them as party-defendants 3 to 6 in the aforementioned suit filed by the 1st respondent/plaintiff against respondents 2 and 3/defendants 1 and 2 for eviction and recovery of arrears of rent.

I have heard the submissions of Sri K.G.Krishna Murthy, learned Senior Counsel appearing for the petitioners (hereinafter referred to as 'third parties/proposed defendants 3 to 6') and of Sri O.Manohar Reddy, learned senior counsel appearing for the 1st respondent/plaintiff (hereinafter referred to as 'plaintiff'). Respondents 2 and 3 are stated to be not necessary parties and none appears for the said respondents/defendants.

I have perused the material record.

The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows: "The plaintiff is the son of one Jayaramaiah. He brought the suit against defendants 1 and 2 for eviction from the plaint schedule shops and for recovery of arrears of rent. The said defendants, who are tenants, are resisting the suit for eviction and other reliefs. While so, the proposed defendants 3 to 6 filed the subject application for their

impleadment as defendants 3 to 6. The plaintiff resisted the said application. The trial Court, by the orders impugned in this revision, dismissed the said petition. Therefore, the proposed defendants 3 to 6 are before this Court.”

The case of the proposed defendants 3 to 6, in brief, is as follows: “The plaint schedule properties, along with other properties, are joint family properties of the plaintiff and Anand Krishnaiah (Anand Krishna Murthy) and other children of Jayaramaiah; on the death of Jayaramaiah, one of his sons, Radhakrishna Murthy, filed a suit for partition O.S.No.19 of 1985 in the Court of the learned Additional District Judge, Hindupur against the plaintiff herein and the said Anand Krishnaiah and others; in the said suit a preliminary decree was passed on 08.05.1990; in the said suit, Anand Krishnaiah and plaintiff herein, who are defendants 3 and 5 therein, are held entitled to equal shares and their shares are determined as 1/5th share each besides 1/11th share each in the share of the deceased father; however, the plaintiff brought the suit against the present defendants 1 and 2 for eviction and recovery of arrears of rent without impleading the proposed defendants, who are co-sharers; therefore, the proposed defendants 3 to 6, who are entitled to a share in the plaint schedule properties being the wife and children of Anand Krishnaiah, filed the present petition for their impleadment in the suit for eviction and arrears of rent filed by the plaintiff against defendants 1 and 2/the tenants.”

The further case of the proposed parties/defendants 3 to 6 in support of their request for impleadment, in brief, is this: “The property is the joint family property of the plaintiff and Anand Krishnaiah and other children of Jayaramaiah; the proposed defendants 3 to 6 are the legal heirs of Anand

Krishnaiah; during the life time of the said Anand Krishnaiah, one of the brothers, Radhakrishna Murthy, brought the suit for partition aforesaid in respect of the joint family properties including the present plaint schedule properties; the said suit was preliminarily decreed on 08.05.1990 holding *inter alia* that the plaintiff herein and the late Anand Krishnaiah are entitled to equal shares, namely, 1/5th share each besides 1/11th share each in the share of the deceased father; therefore, Anand Krishnaiah and the plaintiff, are co-sharers of the present plaint schedule properties; however, the plaintiff brought the suit against the tenants/defendants 1 and 2 without impleading Anand Krishnaiah or his legal heirs i.e., the proposed defendants 3 to 6, who are the wife and children of Anand Krishnaiah; in the said suit for partition, after the preliminary decree, the proposed defendants and others filed I.A.No.629 of 2011 for passing of a final decree; in that final decree petition, the present plaintiff is the 2nd respondent; the final decree proceedings cover the present suit schedule property; by a mutual consent, the property was leased out to the defendants 1 and 2 herein; recently, the proposed defendants 3 to 6 came to know about the pendency of the instant suit and also of the fact that the plaintiff filed a cheque application in this pending suit for withdrawing the amounts deposited by the defendants/tenants towards rents in respect of the plaint schedule property; in fact, the said property is liable for partition among all the sharers as per the terms of the preliminary decree and the final decree that may ultimately be passed; the plaintiff suppressed the fact and played fraud on the proposed defendants, who are co-sharers and filed a cheque petition before the Court of the learned Senior Civil Judge, Hindupur, with a malafide intention to withdraw the amounts of rents

deposited by the tenants though the suit property is covered by the preliminary decree; the plaintiff did not intentionally add the proposed defendants though they are proper and necessary parties; despite the pendency of the suit for partition, the plaintiff entered into a lease agreement with the 1st defendant and it clearly shows the fraud played by the plaintiff on the proposed defendants; the plaintiffs and defendants 1 and 2 are colluding together and the suit was being prosecuted by suppression of fact that the suit for partition is pending; the suit is filed with an intention to cheat the proposed defendants; if the plaintiff is allowed to withdraw the rents being deposited by defendants 1 and 2/tenants, the proposed defendants 3 to 6 will be put to heavy and irreparable loss; in fact, the proposed defendants are suffering loss from 1985 onwards; late Anand Krishnaiah purchased the shares of other shares i.e. defendants 2, 7, 9 and 10 in the suit for partition by paying consideration to them and a compromise was recorded in the said suit; the plaintiff is dragging on the application filed for passing of final decree in the suit for partition only to withdraw the amount deposited by the tenants without the knowledge of the proposed defendants and to defraud them and to defeat their legitimate right to a share in the rents deposited by the defendants 1 and 2/tenants.”

Per contra, the case of the plaintiff, who is resisting the application for impleadment of the proposed defendants 3 to 6, in brief, is this:

“The suit is filed by the plaintiff against defendants 1 and 2 for eviction and recovery of arrears of rent; the proposed defendants are claiming a share in the plaint schedule property through Anand Krishnaiah, who is the elder brother of the plaintiff; they are aware of the compromise

that was effected between the brothers and sisters of the plaintiff who are parties to the suit for partition in O.S.No.19 of 1985 on the file of the learned Senior Civil Judge, Hindupur. As per the said compromise, the present suit schedule property was allotted to the share of this plaintiff herein who is already in possession of the same and who leased out the same to defendants 1 and 2 on the date of the said compromise; the said fact is within the knowledge of late Anand Krishnaiah through whom the proposed defendants 3 to 6 are claiming a share in the plaint schedule property; as on the date of filing of the instant suit, the said Anand Krishnaiah was alive and he never raised any objection for leasing out the property or filing this suit against the tenants by this plaintiff for eviction and recovery of arrears of rent; in the suit for partition, this plaintiff filed a counter in I.A.No.629 of 2011 in O.S.No.19 of 1985 by enclosing a copy of the document containing the terms and conditions of the compromise, which was also signed by Anand Krishnaiah and other brothers; the said fact is to the knowledge of the proposed defendants 3 to 6; they are neither necessary nor proper parties to the present suit and their presence in the present suit is not required for the purpose of its disposal; the suit is primarily based on the contract between the plaintiff and defendants 1 and 2 and the relationship between the parties is one of land lord and tenants, and therefore, in such a suit, the question raised by the proposed defendants 3 to 6 does not arise for adjudication; the plaintiff is the author of the plaint and he alone is entitled to amend the pleadings and the proposed defendants cannot ask for their impleadment, which necessitates amendment of plaint; since the proposed defendants 3 to 6 are not necessary parties, the petition may be dismissed.”

As already noted, the trial Court dismissed the petition, therefore, the proposed defendants are before this Court. The learned Senior counsel appearing for the proposed defendants 3 to 6, while reiterating their case, which is extracted supra, would contend as follows:

“Admittedly the property is a joint family property; the preliminary decree reflects that Anand Krishnaiah is having a 1/5th share besides 1/11th share in the share of the father in the plaint schedule property covered by the said decree in the suit for partition; the plaintiff is not the absolute and exclusive owner of the plaint schedule property in the instant suit; during the pendency of the suit for partition and after the preliminary decree was passed, the alleged lease was entered into by the plaintiff with the defendants 1 and 2 in the instant suit and the instant suit was brought for eviction and recovery of arrears of rent without impleading the co-sharers i.e., the proposed defendants 3 to 6; subsequently, the proposed defendants 3 to 6 filed I.A.No.629 of 2011 for passing a final decree in terms of the preliminary decree; in the said petition, the plaintiff herein is the 2nd respondent and he is dragging on the matter; the instant suit was filed without impleading the co-sharers to defraud them and to knock away their shares including their share of rents; the plaintiff in the instant suit had already withdrawn Rs.10 Lakhs deposited by the defendants 1 and 2/tenants towards rents; a further sum of Rs.7,50,000/- and odd is lying to the credit of the suit; the said amount was deposited by the tenants towards rents; having filed a cheque petition, he is making efforts to withdraw the entire amount of rent in which the proposed defendants 3 to 6 are having a share; so, they are proper and necessary parties as they are co-sharers of the property and are

entitled to a share in the rents; in view of the proceedings in the partition suit, the plaintiff is not entitled to make an exclusive claim in respect of the rents being realized from the suit property in the instant suit; the trial Court made an erroneous observation that the proposed defendants 3 to 6 can work out their rights in the partition suit and erroneously dismissed the petition for impleadment filed by the proposed defendants 3 to 6; since the plaint schedule property was originally a joint family property, in which, Anand Krishnaiah, the predecessor in interest of the proposed defendants 3 to 6, is having a share and as on his death, his share devolved on the proposed defendants 3 to 6, they being the co-owners of the property, they are entitled to be impleaded as party-defendants 3 to 6; their addition as parties to the suit is necessary to protect their interest; if they are not impleaded as parties and the plaintiff herein takes away the rents deposited by the tenants, it will be difficult for them to recover the said amounts from the plaintiff; the trial Court ought to have considered the admitted fact that the proposed defendants are co-sharers and they are entitled not only to a share in the property but also to a share in the rents being paid by the tenants/defendants 1 and 2 in the instant suit.”

Per contra, the learned counsel for plaintiff, while reiterating the contentions of the plaintiff, which are stated supra, and while supporting the orders of the Court below, would contend as follows:

“There was a compromise between the brothers during the life time of Anand Krishnaiah and a document was executed reducing the terms of compromise into writing and the same was signed by Anand Krishnaiah and other brothers; a copy of the said document was filed along with the counter

of the plaintiff herein in I.A.No.629 of 2011 in O.S.No.19 of 1985, i.e., the suit for partition suit; in view of the said compromise, the plaintiff is the exclusive and absolute owner of the plaint schedule property in the instant suit and he, in fact leased out the instant suit schedule property to the tenants/defendants 1 and 2; when the instant suit property was thus leased out to the defendants 1 and 2 and thereafter when the suit was instituted, Anand Krishnaiah was alive and he never raised any objection; the proposed defendants 3 to 6 are having knowledge of the said fact; the instant suit is filed for eviction of the tenants from the instant suit schedule property and recovery of arrears of rent, wherein, the only issues that fall for consideration are – ‘whether there is jural relationship between the plaintiff and defendants 1 and 2?’; ‘whether quit notice is valid?’; and, for effective adjudication of the said issues in the instant suit, the presence of the proposed defendants 3 to 6 is not at all necessary; the trial Court was right in its observation that the proposed defendants 3 to 6 can agitate their rights, if any, in the suit for partition; therefore, the well considered order of the trial Court brooks no interference.”

I have given detailed and thoughtful consideration to the submissions. The instant suit is filed by the plaintiff against the defendants 1 and 2 *inter alia* claiming that they are the tenants in the plaint schedule property, which exclusively belongs to him. The instant suit is filed for eviction of the said tenants and for recovery of arrears of rent. Admittedly, there is a suit for partition in O.S.No.19 of 1985 on the file of the Court of the learned Senior Civil Judge, Hindupur, between one Radhakrishna Murthy and others including the plaintiff and his brother Anand Krishnaiah as defendants. In

the said suit a preliminarily decreed was passed, on 08.05.1990; whereunder, the plaintiff and his brother Anand Krishnaiah were held entitled to a 1/5th share each besides 1/11th share each in the share of the father in the plaint schedule properties of the said suit, which schedule includes the present plaint schedule property. However, according to the plaintiff, there was a compromise and under the compromise, which was reduced into writing and signed by Anand Krishnaiah and other brothers, the plaint schedule property fell to his exclusive share and that he was allotted exclusively the instant suit schedule property and that he had leased out the property to the tenants and that he is collecting the rents as per his entitlement. It is also the case of the plaintiff that Anand Krishnaiah, during his life time has never objected for the plaintiff leasing out the instant suit property and instituting the instant suit. In fact, the proposed defendants 3 to 6 are the wife and children of Anand Krishnaiah. They filed I.A.No.629 of 2011 in the suit for partition, for passing a final decree. The said application is pending and the truth or otherwise of the compromise pleaded by the plaintiff herein is yet to be determined in the said application. Admittedly, the tenants are depositing rents to the credit of the suit and the plaintiff is receiving the same by filing applications for grant of cheques. It is also not in dispute that some more amount of rent is now lying to the credit of the instant suit. Now, the proposed defendants 3 to 6 want to come on record only for the reason that they are entitled to a share in the rents deposited by the tenants to the credit of the instant suit; they *inter alia* contend that the plaintiff is not entitled to exclusively claim the rent and withdraw the same to their disadvantage by playing fraud on them despite declaration of their share in the preliminary

decree granted in the suit for partition. They also submit that it would be difficult for them to recover the rents from the plaintiff herein, if he is allowed to withdraw the entire rents deposited to the credit of the present suit by the tenants. However, as rightly pointed out by the learned counsel for plaintiff herein, the questions that would be determined in the suit for eviction and for recovery of arrears of rent would be the existence or otherwise of the jural relationship between the parties to the suit and the validity of the quit notice. If the proposed defendants 3 to 6 are impleaded on their claim that they are entitled to a share being co-sharers, the scope of the suit would be enlarged and in the light of the fact that the plaintiff is claiming absolute ownership, the trial Court would be called upon to decide the rights *inter se* of the plaintiff and the proposed defendants 3 to 6 in a suit for eviction filed by the plaintiff herein against the tenants, and such a course, in the well considered view of this Court, is not permissible under facts and in law. Therefore, the proposed defendants 3 to 6, who have already filed an application for passing of the final decree, can work out the remedies, which the law permits, by filing an appropriate application, if they wish to do so, in the pending final decree proceeding in the partition suit and seek to direct the plaintiff herein either not to withdraw the rents deposited by the tenants to the credit of the instant suit or request for determination of their share in the instant suit property in the occupation of the tenants or for a share in the rent amount; but they cannot seek permission for their impleadment in the instant suit for eviction and for recovery of rents filed against the tenants by the plaintiff. As already noted, if such course is permitted, it would enlarge the scope of the suit for eviction.

On the above analysis, this Court finds that there is no merit in the revision and that none of the contentions urged before this Court by the proposed defendants 3 to 6 merit consideration and that the order of the trial Court is justified and does not brook interference.

Revision petition is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

M. SEETHARAMA MURTI, J

13th December 2016

ajr

