

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.3320 of 2014

ORDER:

The unsuccessful petitioner-plaintiff filed this civil revision petition under Article 227 of the Constitution of India assailing the order, dated 22.07.2014, of the learned V Additional District Judge (Judge, Fast Track Court) Guntur, passed in IA.no.386 of 2013 in OS.no.245 of 2010 filed by the plaintiff under Order VI Rule 17 read with Order I Rule 10 and Section 151 of the Code of Civil Procedure, 1908, requesting for permission to implead the respondents 2 and 3 as party defendants 2 and 3 to the suit and consequently amend the plaint as stated in the affidavit and the petition list.

2. I have heard the submissions of Sri K.S. Murthy, learned counsel for the revision petitioner-plaintiff and of Sri B.Venkateswara Rao, learned counsel for the respondents 2 and 3-proposed defendants 2 and 3. Though the 1st respondent-defendant is served with notice, none appears. I have perused the material record.

3. The parties shall hereinafter be referred to as the plaintiff, the defendant and the proposed defendants 2 and 3 for convenience and clarity.

4. The facts which are necessary for consideration, in brief, are as follows:

The plaintiff is the son of the sole defendant. He brought the suit for partition of the plaint schedule properties into two equal shares and for allotment of one such separated share to him. During the pendency of the said suit, he filed the subject application for impleadment of the proposed defendants 2 and 3 as party defendants 2 and 3 to the suit. The said application was resisted by the proposed defendants. On merits and by the order impugned in this revision, the trial Court dismissed the said petition. Therefore, the plaintiff is before this Court.

5. The case of the plaintiff in support of his afore-stated request, in brief, is this: - 'After filing of the suit for partition against his father, he came to know that his father sold the plaint schedule property to the proposed defendants 2 and 3. He is entitled to a right of pre-emption. So, his father is under an obligation to offer his share of property for sale first to him. But, his father did not make such an offer and sold the property to the proposed defendants 2 and 3. Therefore, the said sale is not binding upon him. After purchase of the property from the father, the proposed defendants 2 and 3 filed OS.no.80 of 2011 against the plaintiff and the defendant (father and son) for eviction. In the facts and circumstances stated, it is necessary to implead the proposed defendants 2 and 3 as party defendants 2 and 3 to enable the plaintiff to claim the right of pre-emption and necessary reliefs as stated in the petition list, in their presence.'

6. The case of the proposed defendants, in brief, is this: - 'The material allegations in the affidavit filed in support of the petition are false. The petitioner earlier filed a TrCMP before this Court for transfer of the suit of the proposed defendants in OS.no.80 of 2011 from the file of the IV Additional District Court, Guntur, to the file of the V Additional District Court, Guntur, where the present suit is pending. The said petition was allowed in November, 2012 as the subject matter of both the suits is one and the same. The proposed defendants filed the suit against the plaintiff and the defendant in the present suit for recovery of vacant possession and for recovery of damages for use and occupation and future mesne profits. The sole defendant in the suit, that is, the father of the plaintiff, is the absolute owner of the property as it has fallen to his share in a partition that was affected between the father and the son on 16.05.1970; and evidencing the said partition, a partition list was executed on 30.12.1971 between them. On becoming a major, the plaintiff accepted the above said

partition and sold to some third party purchasers, certain of properties that fell to his share under the very same list. When the defendant made an offer to sell the suit schedule properties, these proposed defendants 2 and 3 accepted the said offer and purchased the same for valuable consideration. At the time of execution of the sale deed in favour of these proposed defendants, both the father and son, the plaintiff and the defendant in the suit, informed that they will vacate and deliver vacant possession of the property within a short time and on an auspicious day. Believing the said representations, a recital was made in the sale deed of these defendants that the property was delivered. Later, the father and the son failed to vacate and deliver vacant possession of the property. Therefore, these defendants are constrained to file a suit for recovery of possession in OS.no.80 of 2011. In the said circumstances, the impleadment of these defendants as party defendants to the subject suit does not arise for consideration. The petition is liable to be dismissed.'

7. On merits and by the order impugned in this revision, the trial Court dismissed the application on the ground that if the proposed defendants, who are purchasers of the property from the sole defendant, are impleaded the scope of the suit would be enlarged and that the proposed defendants 2 and 3 are not necessary parties to the suit for partition between a father and a son. Aggrieved thereof, the plaintiff filed this revision.

8. In the revision grounds, while reiterating the case of the plaintiff, which is already stated supra, it is stated that the present suit is one for partition; one of the sharers is entitled to a right of pre-emption and that therefore for exercising the right of pre-emption, the purchasers of a share of one of the sharers are necessary parties as the said relief is to be claimed in their presence and not in their absence.

9. At the hearing, learned counsel for the plaintiff reiterated the said contentions of the plaintiff.

10. Learned counsel for the proposed defendants while reiterating their stand, which is already stated supra, in detail, and while supporting the orders of the Court below contended that by virtue of a partition list of the year 1970 the sole defendant who is the father of the plaintiff became the absolute owner and that under the very same partition list certain other properties were allotted to the son, the plaintiff, and that on becoming a major, the plaintiff accepted the partition list and further sold to third parties some of the properties that fell to his share under the partition list and that when the father offered to sell the subject properties, which exclusively fell to his share, the proposed defendants having accepted the said offer purchased the same for valuable consideration and that in the circumstances stated in their counter they are constrained to file the suit for eviction of the father and the son from the property and that the father and the son colluded and that the father got instituted this suit through the son to delay and defeat the just claim of the proposed defendants and that the proposed defendants are not necessary parties to a suit for partition.

11. I have bestowed my attention to the facts and the submissions. Since the facts and contentions are stated supra in detail, there is no need to dilate the same. Admittedly, at one point of time the property is a joint family property. The son is disputing the earlier partition and filed the suit against the father for partition of the family properties into two shares and allotment of one such separated share to him. In the subject suit for partition, the truth and validity of the earlier partition and the right of the son to claim partition have to be adjudged after full fledged trial. This is not the stage to advert to any of the controversies involved in the suit and record any findings which will have a bearing on the merits of the issues involved the suit. If there is no earlier

partition, the suit will be decreed as prayed for; if there is an earlier partition, even then also the right of the son, the plaintiff in the suit, to claim right of pre-emption has to be examined keeping in view the provisions of the Indian Partition Act. The said issue of right of pre-emption has to be necessarily examined in the presence of the purchasers of the property from the father, that is, the proposed defendants 2 and 3 as they are now claiming right, title and interest in the property. Since the dominant purpose of the Rule is to minimize the litigation and enable the parties to have all the issues relating to one dispute resolved in one suit, the requests of the plaintiff can be permitted, in the considered view of this Court. As rightly pointed out, the question whether the plaintiff would be entitled to succeed or not on the matter now being introduced by way of the proposed amendment cannot be prejudged while considering the subject application. As it is necessary to adjudicate the right of pre-emption being claimed in the suit by way of proposed amendment, this Court is of the considered view that the proposed defendants 2 and 3, who purchased the plaintiff schedule properties from the sole defendant, who is no other than the father of the plaintiff, are necessary and proper parties; further, in the light of their contention that the suit is a result of collusion between the father and the son, and that the suit is intended to delay and defeat their just claim, it is also in their interests to implead them as party defendants and decide all the issues involved in the suit in their presence and give a quietus to the dispute once and for all.

12. In the above view of the matter, this Court finds that the trial Court is not justified in dismissing the petition and that for the reasons stated the revision is having merit and deserves to be allowed.

13. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. As a sequel, IA.no.386 of 2013 in OS.no.245 of 2010 on the file of the trial Court is allowed. The trial Court shall now give an opportunity to the

plaintiff to carry out the amendments and file an amended neat copy of the plaint and also to the defendant and the proposed defendants to respectively file additional pleadings and pleadings and settle necessary issues and dispose of the suit as expeditiously as possible and preferably within four months from the date of receipt of a copy of this order.

Miscellaneous petitions pending, if any, also shall stand dismissed. There shall be no order as to costs.

JUSTICE M. SEETHARAMA MURTI

20th December, 2016
Vjl

