

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

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CRP.No.1429 of 2016
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ORDER :
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Heard Sri V.S.R. Anjaneyalu, counsel for petitioner;
and Sri B.S. Kartik, counsel for respondent nos. 1 and 2.

2. The 2nd respondent filed O.S.No.133 of 2014 against petitioner herein for cancellation of a settlement deed dt.27.06.2013 on the ground that it was obtained by mis-representation, fraud and coercion, and does not bind her.

3. The petitioner filed a written statement disputing this contention.

4. After issues were framed, trial commenced.

5. Since the 2nd respondent was more than eighty years old an Advocate-Commissioner was appointed to record her evidence. He returned the warrant saying that 2nd respondent / plaintiff was unable to give evidence due to loss of her memory and old age. Therefore her chief-examination was eschewed, and the matter was posted for further evidence of 2nd respondent.

6. At that stage, the 1st respondent, who is the son of 2nd respondent, filed an application under Order I Rule

10 (2) C.P.C. to add him as 2nd respondent in the suit.

7. In the affidavit filed in support of this application, he contended that certain documents were obtained by petitioner from 2nd respondent by mis-representation and fraud; that 1st respondent also has a share in the properties which are subject matter of those documents, including the settlement deed whose cancellation is sought in the present suit; and that his rights also would be seriously affected if he is not impleaded in the suit.

8. Counter-affidavit was filed by petitioner opposing this application. It was alleged in the counter-affidavit that it is the 1st respondent who was running the show from behind the 2nd respondent and he now wants to come on record for unlawful gain; that 2nd respondent is not a party to the settlement deed dt.27.06.2013; and is therefore not a proper and necessary party to the suit.

9. By order dt.04.12.2015, the Court below allowed the application holding that 1st respondent is the son of 2nd respondent and is her legal representative, and in view of the fact that 2nd respondent is unable to give evidence, it is a fit case to implead 1st respondent as a party in the suit as 2nd plaintiff.

10. Challenging the same, the present Civil Revision

Petition is filed.

11. The counsel for petitioner contended that no case had been made out by 1st respondent for seeking impleadment as 2nd plaintiff in the suit, and as long as the 2nd respondent is alive, the 1st respondent cannot be permitted to come on record as his legal representative.

12. The counsel for petitioner also placed reliance on the order dt.07.04.2016 in CRP.No.1025 of 2016 where a similar application filed in another suit by 1st respondent which had been allowed by the trial court in another suit had been set aside by this Court.

13. The counsel for respondents however refuted the above contentions, and supported the order passed by the Court below.

14. Admittedly, the suit has been filed for cancellation of a registered settlement deed allegedly executed by 2nd respondent in favour of petitioner. Assuming that 1st respondent had any right, title or interest in the property which is subject matter of the said document, he has to independently adjudicate the said right in a properly constituted suit and cannot seek to get impleaded in the suit filed by 2nd respondent against petitioner. Merely because the 2nd respondent is unable to depose in the Court or before an Advocate-

Commissioner, it does not confer upon the 1st respondent the right to get impleaded and contest the suit as 2nd plaintiff. Of course, it is open to him to give evidence in the suit if he so desires on behalf of 2nd respondent.

15. Similar view has been expressed by this Court in CRP.No.1025 of 2016, which is relied upon by petitioner.

16. Therefore, I am of the opinion that the Court below committed error of jurisdiction in impleading 1st respondent as 2nd plaintiff in the suit by allowing I.A.No.1003 of 2015.

17. Accordingly, the Civil Revision Petition is allowed and the order dt.04.12.2015 in I.A.No.1003 of 2015 in O.S.No.133 of 2014 on the file of III Additional District Judge, Bhimavaram is set aside. No order as to costs.

18. Miscellaneous applications, pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 15-07-2016

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