

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.1038 of 2016

ORDER:

The petitioners/plaintiffs filed the present revision petition under Article 227 of the Constitution of India, questioning the order dated 04.01.2016 passed in I.A.No.45 of 2015 in O.S.No.1 of 2007 on the file of the District Judge, Chittoor, wherein and where under an application under Order 1 Rule 10 C.P.C. read with Rule 28 of the Civil Rules of Practice, seeking impleadment of the proposed parties as defendant Nos.11 and 12 in the suit was rejected.

The facts in issue are as under:

The petitioners/plaintiffs filed O.S.No.1 of 2007 for partition of the plaint schedule property. It is stated that defendant No.1 is the father of the plaintiffs who has completely neglected the plaintiffs by playing fraud on them in collusion with his brother. Hence, the petitioners filed the above suit. It is said that during the pendency of the suit, defendant No.1 influenced the bank officials, obtained various loans by mortgaging ancestral joint family properties and misused the same without consent and knowledge of the petitioners. Defendant No.1 and bank officials colluded with each other and are trying to create a charge over item No.6 of the plaint "A" Schedule property

for realizing the debts. On 07.04.2015 the petitioners issued a legal notice to the proposed parties but having acknowledged the same, they did not give any reply. Hence, the petitioners filed I.A.No.45 of 2015 to implead the proposed parties as defendant Nos.11 and 12 in the above suit.

Respondent No.2 herein filed counter, which was adopted by respondent Nos.3 to 6, stating that the allegations made in the petition that the proposed parties colluded with respondent No.1 and created charge over item No.6 of plaint "A" schedule property are all false and misleading. It is also stated that the proposed parties have nothing to do with the joint family properties and they are neither necessary nor proper parties to the suit. It is urged that if the petitioners are aggrieved by the action of the bank officials they should initiate separate proceedings. Hence, it is said that the present petition is filed only to protract the litigation.

After considering the rival submissions, the Court below dismissed the said application. Aggrieved by the same the present Civil Revision Petition is filed.

Learned counsel for the petitioners mainly submits that the Court below erred in dismissing the application and the proposed parties are proper and necessary parties for a just decision of the case. He reiterates the contentions raised in the petition filed in support of the said I.A. He

further submits that the impleadment of the proposed parties as defendant Nos.11 and 12 is just and necessary for proper decision of the case as they have colluded with defendant No.1 and created charge over item No.6 of plaint "A" schedule property during pendency of the suit.

As seen from the material on record, an application under Order I, Rule 10 of C.P.C. came to be filed for impleadment of Manager, State Bank of India, Main Branch, Chittoor and Regional Manager, State Bank of India, Region No.6, Renigunta Road, Tirupati as defendant Nos.11 and 12. Admittedly the main suit is for partition of ancestral properties. The affidavit filed in support of the petition does not anywhere indicate that these two proposed respondents have created or tried to create a charge over Item No.6 of the plaint "A" schedule properties. They are not made as defendants at the time of filing of the suit. Seven years later they are sought to be impleaded on the ground that they have colluded with defendant No.1. Since no relief can be claimed against them in the main suit filed for partition, making them as defendants in the suit is of no consequence/use. Hence, the finding of the trial Court that the proposed parties are not necessary parties needs no interference. It is needless to mention that the petitioner is always at liberty to avail the remedy available under the relevant provisions to summon the proposed parties as witnesses, if the trial is not yet complete.

For the aforesaid reasons, the Civil Revision Petition is dismissed. There shall be no order as to costs. As a sequel thereto, Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand dismissed.

JUSTICE C. PRAVEEN KUMAR

03.06.2016

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