

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.1954 of 2014

ORDER:

The unsuccessful petitioners-defendants 1 and 2 filed this civil revision petition under Article 227 of the Constitution of India having been aggrieved of the order, dated 09.06.2014, of the learned III Additional Junior Civil Judge at Vijayawada of Krishna District passed in IA.no.386 of 2014 in OS.no.6 of 2014 filed by the defendants 1 and 2 under Order VI Rule 17 of the Code of Civil Procedure, 1908, read with Rule 28 of the Civil Rules of Practice, 1980, requesting for amendment of the plaint and for impleadment of the proposed party as party 4th defendant in the suit and for necessary consequential amendment.

2. I have heard the submissions of Sri Narasimha Rao, M.R.L., learned counsel for the revision petitioners and of Sri Sai Gangadhar Chamorthy, learned counsel for the respondents 1, 2 and 4. I have perused the material record.

3. The 3rd respondent died. It is stated that he is not a necessary party and his LRs need not be brought on record.

4. The parties shall hereinafter be referred to as the plaintiffs, defendants 1 and 2 and the proposed 4th defendant for convenience and clarity.

5. The facts which are necessary to be stated as a preface to this order, in brief, are as follows:

The 1st plaintiff and the defendants 1 and 2 are brothers. The 2nd plaintiff is the wife of the 1st plaintiff. The plaintiffs brought the suit against the defendants for declaration that the plaint schedule properties belong to the 1st plaintiff by virtue of a registered settlement deed bearing document no.5266 of

2005 dated 14.09.2005 executed in respect of the plaint schedule properties by the proposed 4th defendant, who is the mother of the defendants 1 and 2 and the 1st plaintiff. The defendants 1 and 2 who are resisting the suit filed the subject application for impleadment of the mother as a party to the suit, *inter alia*, contending that the mother is a necessary and proper party to the suit and her presence as a party defendant to the suit is necessary for better appreciation of facts and adjudication of the *lis* as she is the executant of the afore-stated registered settlement deed dated 14.09.2005 in respect of the plaint schedule property in favour of the 1st plaintiff. The plaintiffs resisted the subject application, *inter alia*, contending that in a suit for declaration based on the settlement deed executed by the mother, the mother is not a necessary party and that it is for the plaintiffs to prove the material facts pleaded and discharge the legal burden upon them and that if necessary the plaintiffs would take appropriate steps for examining the proposed party for proving the registered settlement deed and that for addition of the mother as a party there are no valid grounds and that the petition is filed by the defendants to avoid commencement of the trial in the suit. On merits and by the orders impugned in this revision, the trial Court dismissed the petition, *inter alia*, observing that the burden is upon the plaintiffs to prove their pleaded case and that in their counter they have stated that they would examine the mother as a witness if necessary and that the 1st plaintiff and the defendants 1 and 2 are the sons of the lady who executed the registered settlement deed and therefore she need not be brought on record as a party defendant and that the issues involved in the suit can be effectively adjudicated without her presence as a party to the suit and that in case the plaintiffs failed to examine the mother as a witness, it is always open to the defendants 1 and 2 to examine her as a witness on their behalf. Aggrieved thereof, the defendants 1 and 2 preferred this revision.

6. At the hearing, learned counsel for the defendants 1 and 2 while reiterating their case, which is stated supra, would contend that the proposed 4th defendant, being the mother of the 1st plaintiff and the defendants 1 and 2, knows all the facts prior to the litigation and that since the plaintiffs are relying upon a registered settlement deed dated 14.09.2005 executed by the mother and as the said document is the basis for the suit claim, which is filed for declaration and recovery of possession, her presence as a party defendant to the suit is necessary for effective adjudication of the //s and that the trial Court erroneously dismissed the petition ignoring the fact that she is a proper and necessary party to the suit.

7. Per contra, the learned counsel for the plaintiffs while supporting the order of the Court below and while stating that the mother who executed the registered settlement deed dated 14.09.2005 in favour of the 1st plaintiff in respect of the plaint schedule property is at best a witness or a material witness and it might be necessary for the plaintiff to examine her as witness to substantiate the claim of the plaintiffs and that it is for the plaintiffs to establish their pleaded case by adducing the required standard of evidence and that if necessary the plaintiffs would, at the appropriate stage, examine the mother, the executant of the registered settlement deed, as a witness on their side and that the trial Court correctly observed that a witness need not be arrayed as a party to the suit and that the suit can be effectively adjudicated even in the absence of the mother and that the trial Court had also given liberty to the defendants 1 and 2 to examine the mother, the executant of the registered settlement deed, in case of the failure of the plaintiffs to do so and hence the order of the trial Court does not warrant interference.

8. I have given detailed and thoughtful consideration to the facts and submissions. Admittedly, the mother is not claiming any interest in the suit schedule properties. The suit of the plaintiffs is based on the registered settlement deed dated 14.09.2005 executed by the mother, M. Subadhra Bala, in respect of the plaint schedule properties in favour of the 1st plaintiff. The defendants 1 and 2, who are disputing the said document and the claim of the plaintiffs, filed the subject petition requesting for permission for impleadment of the mother as a party defendant to the suit, *inter alia*, contending that she is the executant of the document being relied upon by the plaintiffs and that she knows all the facts prior to the litigation and therefore she is a necessary party and that in her presence the *//s* can be effectively adjudicated. In a suit for declaration, as per well settled law, the plaintiffs succeed on their own strength, but not on the weakness of the defence, and it is for the plaintiffs to establish their pleaded case by examining the necessary material witnesses to substantiate their case. As rightly pointed out, a material witness, who is not claiming any interest in the suit property, is neither a proper nor a necessary party to the suit but is only material witness and the examination of such witness might be necessary to substantiate the case of one of the parties. Be it noted that the plaintiffs have already stated in their counter that if necessary they will examine the mother, the executant of the registered settlement deed, as a witness on their side, at an appropriate stage. The trial Court in its order has also stated that in case of failure of the plaintiffs to do so, the defendants 1 and 2 are at liberty to examine the mother on their side as a witness and that in the facts and circumstances of the case the proposed party is not a necessary party and that the *//s* can be effectively adjudicated even in the absence of the said party (witness) as a party defendant to the suit.

9. On the above analysis, this Court finds that the well considered order of the trial Court does not warrant interference and that there is no merit in the revision and that the revision petition is liable to be dismissed.

10. Accordingly, the Civil Revision Petition is dismissed confirming the order of the trial Court.

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

20th December, 2016
Vjl

JUSTICE M. SEETHARAMA MURTI

