

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION Nos.2207 & 2285 of 2016

COMMON ORDER:

The petitioner is defendant No.2 in O.S.No.2 of 2013 on the file of the Senior Civil Judge, Narayanpet. The said suit was filed by respondents 1 and 2 herein seeking partition of the suit schedule properties. The petitioner filed written statement in the said suit. After filing the written statement, the petitioner filed a counter-claim on the basis of the subsequent pleadings. He also filed a separate application for amendment of the pleadings. The said applications were dismissed even without numbering by the learned Senior Civil Judge, Narayanpet, by order dated 24.07.2015 challenging which, the present Civil Revision Petitions are filed.

2. C.F.R.No.2450 of 2015 was filed seeking permission to file counter-claim, whereas, C.F.R.No.1072 of 2015 was filed for amendment of the pleadings. Admittedly, the petitioner herein is the 2nd defendant in the suit and he is the purchaser of the property from the 1st defendant. He filed the application seeking permission for filing counter-claim and the relevant portion of the affidavit reads as follows:-

“In the sale deed no.58/2013 executed by the defendant No.1, Sy no is wrongly mentioned as Sy no.229/Aa instead of sy no 230 even though boundaries pertains to Sy no. 230, the same also mentioned in my written statement.

I am intending to file counter claim as subsequent pleadings with a plea to allot the sold out extent in the sale deed no.58/2013 to the share of vendor/defendant no.1 in partition and to rectify the Sy no in the sale deed no 58/2013 and to deposit balance sale amount which the defendant no.1 not received.”

3. The trial Court took note of the fact that the petitioner was the purchaser of the property and the ground on which he wanted to file the counter-claim,

were summarised as follows:-

- “(i) To ask for allotment of the land sold under the sale deed No.58 of 2013 to the share of the defendant No.1;
- (ii) to rectify the survey number in the sale deed which has been wrongly mentioned as 229/Aa instead of Sy.No.230;
- (iii) To permit him to deposit the balance of the sale amount which the Defendant No.1 did not receive from him.”

4. The lower Court ultimately dismissed the application with the following observations:-

“Counter claim can be permitted to be filed by a defendant only if the right or claim in respect of cause of action to him arose against the plaintiff. Here there was no transaction between the plaintiff and the defendant No.2 but the transaction was between the defendant No.1 and the defendant No.2. But Order VIII Rule 6 (a) no way permit a defendant to file counter claim against the co-defendant. The question of depositing the balance of sale consideration in the transaction between the Defendant No.1 and Defendant No.2 shall not arise in the suit by way of a counter-claim since the plaintiff is not a party to such transaction. Since no cause of action arose to the Defendant No.2 against the plaintiff in respect of his claim, his application to permit him to file counter claim could not sustain. However, the defendant No.2 may file additional pleading in case he omits to plead in the written statement.”

5. The learned counsel for the petitioner submits that in a suit for partition, all the parties stand on the same footing, though some are called as plaintiffs and some are called as defendants. The said principle cannot be applied to the purchaser of the property who is not connected with the family of the plaintiff. Admittedly, the present petitioner purchased the property from the 1st defendant, who is the father of the plaintiffs. If the present petitioner has any grievance with regard to the said sale transaction entered by the 1st defendant, he has to pursue the same in other proceedings, but not seeking permission of the Court for filing the counter-claim in a suit for partition instituted by the plaintiffs in respect of the suit schedule properties. The reasoning given by the trial Court, in the facts and circumstances, are correct and, accordingly, CRP No.2285 of 2016 is dismissed.

6. Since C.F.R.No.1072 of 2015, though was filed for amendment of the written statement, the 2nd defendant pleaded for set-off and the said application was dismissed on the ground that the pleading of set-off and counter-claim run on the same footing. In view of the same, CRP No.2207 of 2016 also deserves to be dismissed and is, accordingly, dismissed.

7. After dismissal of both these CRPs, the learned counsel for the petitioner submitted that in view of the payment of Court fee on the counter-claim, the same may be refunded in view of the dismissal of the application. The Trial Court shall take necessary steps for refund of the Court fee paid on the applications in view of the dismissal of the applications.

There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in both these Civil Revision Petitions shall stand closed.

A. RAMALINGESWARA RAO, J

29th April, 2016
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