

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.6478 of 2012

ORDER:

This civil revision petition under Article 227 of the Constitution of India by the petitioners/third parties/proposed respondents 5 to 9 is directed against the orders dated 08.11.2012 of the learned I Additional District Judge, Nellore passed in IA.no.383 of 2012 in IA.no.1628 of 2010 in OS.no.26 of 1998 filed by them under Order I Rule 10 of the Code of Civil Procedure, requesting to implead them as party respondents 5 to 9 in IA.no.1628 of 2010 filed by the plaintiff/preliminary decree holder for passing of a final decree in terms of the preliminary decree granted in the suit for partition.

2. I have heard the submissions of the learned counsel for the revision petitioners/third parties ('the third parties', for brevity) and the learned counsel for the respondents 2 and 3. I have perused the material record.

3. The facts which are not in dispute are as follows:

The plaintiff brought the suit against the defendants for partition. A preliminary decree was passed in the said suit. According to the third parties, when the advocate commissioner visited the suit properties, they came to know about the preliminary decree and, therefore, they have approached the Court below and filed the instant application for their impleadment *inter alia* contending that they had acquired rights and interest in the preliminary decree schedule property under various registered sale deeds. That petition was resisted by the plaintiff. On merits and by the order impugned, the trial Court had dismissed the application of the third parties for their impleadment in the final decree proceedings. Therefore, the aggrieved third parties are before this Court.

4. The learned counsel for the third parties while reiterating the chronology of events would bring to the notice of this Court that the 1st third party had purchased Ac.1.25 cents in S.no.239/7, 240/6 and 238/1 of Mamidipudi village; the 2nd third party had purchased Ac.0.44 cents in

S.No.262/2 of Mamidipudi village; the 3rd third party had purchased Ac.0.75 cents in S.no.247/4 of Mamidipudi village; the 4th third party had purchased Ac.0.37 cents in S.No.158/3 of Paturuvari Kandriga village; and the 5th third party had purchased Ac.1.80 cents in S.no.239 of Mamidipudi village, which are part of the preliminary decree schedule properties and that they have got interest in the subject matter of the suit and that under law, they are entitled to come on record in the final decree proceedings and agitate their rights or alternatively claim equities if they are entitled to do so and that without giving an opportunity to them, the trial Court had erroneously dismissed the petition holding that their documents are hit by the principle enshrined in the doctrine of *lis pendens*. He would further submit that the present application was filed on 21.11.2011 and that the trial Court had dismissed the said application by the orders impugned on 08.11.2012 and that the present revision petition is filed on 20.12.2012 and that the parties to the partition suit having colluded approached the Lok Adalat and obtained an award on 15.12.2012 behind the back of the third parties/revision petitioners herein and that the third parties are not aware of the Award and passing of the final decree by the Lok Adalat till a copy of the same is produced before this Court and that, therefore, they are entitled to be impleaded as parties to the final decree proceedings.

5. The learned counsel for the respondents 2 and 3 having produced a copy of the Lok Adalat Award in Award no.713 of 2012 had submitted that the suit had already culminated in a final decree and that, therefore, the revision petition has become infructuous.

6. Having regard to the submissions and the chronology of events and the undeniable fact that a final decree, a copy of which is produced before this Court, was passed by virtue of the Lok Adalat Award, at this stage, the question of addition of any party does not arise as the partition suit culminated in a final decree and no proceeding is now pending before any Court or forum.

7. Viewed thus, this Court finds that nothing survives for adjudication in this revision petition and the same is liable for dismissal as infructuous.

8. Accordingly, the Civil Revision Petition is dismissed as infructuous. However, the revision petitioners/third parties/proposed respondents 5 to 9 are at liberty to pursue the legal remedies, which the law permits. Since the request of the revision petitioners/third parties for their impleadment to the final decree proceedings is dismissed in the circumstances stated, the orders of the Court below, which are impugned in this revision, shall not come in their way of pursuing their legal remedies, which they are entitled to pursue under law, and which the law permits.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

28th June 2016

Vjl