

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.5284 OF 2016

ORDER:

The Civil Revision Petition is filed against the docket order dated 14.09.2016 passed in I.A. No.117 of 2016 in O.S. No.4246 of 2004 on the file of XVIII Additional Senior Civil Judge, City Civil Court, Hyderabad.

2) Heard learned counsel for the revision petitioner and learned counsel for the respondent No.1. Perused the material on record.

3) The revision petitioner is the plaintiff, who maintained O.S. No.4246 of 2004 against two defendants, who are no other than his mother—Kamavathi Mulchand Shah, W/o.Mulchand Shah and brother Paresh M.Shah. Since Paresh M.Shah died during pendency of the suit, for him, mother is the class-I legal heir and not the brothers and sisters to be proceeded in order of succession as per Section 8 of Hindu Succession Act (for short 'the Act') read with schedule I of the Act. The sister, who is the revision 1st respondent—3rd party filed an application in I.A. No.117 of 2016 claiming that she is also in possession of the suit schedule property covering the relief of declaration and eviction, thereby, she is a necessary party apart from party to the earlier partition suit in O.S. No.2115 of 2003 as 3rd plaintiff, though went unsuccessful from the dismissal of the suit claim by the trial Court for the relief of partition and separate possession, from the contest by present plaintiff as sole defendant therein, vide decree and judgment dated 20.11.2009, which is subject matter of A.S. No.164 of 2010, which was dismissed for default and an application for restoration of the same is pending undisputedly.

4) The contention of revision petitioner as respondent to the impugned order passed in I.A. No.117 of 2016, is that the said allegations are false and she is neither in possession nor got any right particularly from para No.6 of the counter disputing the alleged possession and any right to come on record. The lower Court, however, observed in the impugned order while allowing the application as follows:

“Having regard to the reasons stated in the affidavit of the petitioner and nature of the suit, I am of the opinion that the petitioner is proper and necessary party to the proceedings. No prejudice would be caused to the respondent.

Accordingly, the petition is allowed. Respondent No.1/ plaintiff is directed to carry out the amendments and to file neat copy.”

It is the same, now impugned in the revision.

5) Order I Rule 10 (2) C.P.C relates to the power of the Court to implead any party, once the Court finds such a necessity at any stage of the proceedings. Any stage of proceedings need not be confined to the stage of the suit proceedings. The only consideration is the proposed party is either a necessary party (to mean as contemplated by Order 1 Rule 13 C.P.C of without impleading the person/s the suit relief cannot be decided) or a proper party (to mean for the complete and effective adjudication of the lis his presence is required though the claim can be decided without impleadment). Without any finding of either a necessary party or a proper party, the application for impleadment even by exercising the discretionary power of the Court, cannot be a sound one. The order of the lower Court by non-compliance with the

above is a laconic one and without even assigning any reasons and without even any finding noticing the distinction in between. Thereby the order is liable to be set-aside by remanding the matter with a direction to the lower Court to decide afresh from, if at all a necessary or proper party for the effective adjudication of the lis to consider such impleadment on own merits.

6) Accordingly and in the result, the revision is allowed and remanded. No order as to costs.

7) Consequently, pending miscellaneous petitions, if any, shall stand dismissed.

Dt.22.11.2016
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Dr.JUSTICE B. SIVA SANKARA RAO