

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4547 OF 2016

ORDER:

1) Assailing the order dated 24.03.2016 passed in I.A.No.126 of 2013 in O.S.No.371 of 2012 on the file of the Principal Senior Civil Judge, Madanapalle, wherein and whereunder an application filed under Order I Rules 10, 28 and Section 151 of the Code of Civil Procedure (in short "the C.P.C.") by the proposed defendant, requesting to add him as second defendant, was dismissed, the present application is filed under Article 227 of the Constitution of India.

2) Heard the learned counsel for the petitioner and learned counsel for the respondents.

3) The facts leading to file the present Revision are as under :-

The second respondent herein, who is the plaintiff, filed O.S.No.371 of 2012 on the file of the Senior Civil Judge, Madanapalle, for recovery of money from the defendant, who is the first respondent herein. The averments in the plaint shows that on 14.03.2012 the defendant borrowed an amount of Rs.8,20,000/- from the plaintiff for her family necessities and business expenses agreeing to repay the same with interest at 24% p.a., and in evidence thereof she has executed a registered simple mortgage deed offering

the schedule mentioned property as security in favour of the plaintiff. Subsequently, the plaintiff came to know that the defendant is heavily indebted to several others and when his efforts to get back the money proved futile, the present suit came to be filed seeking repayment of principal amount along with interest @ 24% p.a., i.e., Rs.9,73,613/- together with interest at 24% p.a., from the date of suit till the date of realization. The schedule property shows that the property, which is sought to be mortgaged, is in Survey No.419-2, Paiki Plot No.6. A written statement came to be filed by the defendant denying the receipt of Rs.8,20,000/- from the plaintiff, but however, admits that a registered simple mortgage deed was executed in favour of the plaintiff but no consideration was passed on under the above deed, as alleged in the plaint. The written statement refers to the circumstances under which the simple mortgage deed came to be executed in favour of the plaintiff. During the course of pendency of the proceedings, the petitioner herein filed an application to implead himself as second defendant to the proceedings on the ground that the property, which is subject matter of the suit, was acquired by his grandfather, out of which his father got Ac.2.00 of land in a family partition. It is further stated that the father of the petitioner executed a gift deed in favour of his mother by name P.Reddemma on 15.01.1970 and after her death, the said property devolved upon him as he is the sole surviving legal-heir. It is urged

that the defendant created some nominal documents and constructed a house in the above survey number without having any right. He also produced a copy of record in O.S.No.59 of 2012 on the file of II Additional District Judge, Madanapalle, which was filed by him, seeking declaration of his title over the suit property. It is further submitted that the plaintiff and the defendant colluded with each other, created documents, and filed O.S.No.371 of 2012 with a view to deny the petitioner's right over the said property. Hence, the petitioner filed an application under Order I Rule 10 and Rule 28 and Section 151 C.P.C., to add him as a party to the said proceedings as he is a proper and necessary party to the proceedings. A counter came to be filed by the second respondent/plaintiff denying the averments made in the said suit, contending that the scope of the present suit is only whether the defendant borrowed amount from the plaintiff by executing Registered simple mortgage deed in his favour or not; and that the present application cannot be entertained as it is going to change the nature of the suit. He submits that the rights of the parties can be adjudicated in O.S.No.59 of 2012 and not in the present suit. After considering the rival submissions advanced, the trial court after referring to the judgments of the Apex Court and also the judgment of this Court, dismissed the application on the ground that there is a contract between the parties by way of

registered mortgage deed and as the suit is for a limited purpose the request of the petitioner was rejected.

4) Learned counsel for the petitioner mainly submits that having regard to the nature of dispute, which is existing between the parties and since the petitioner also filed O.S.No.59 of 2012 for declaration of his ownership over the property, he is a proper and necessary party to the suit. He specifically contends that O.S.No.371 of 2012 is a collusive suit and only with a view to deny the proposed defendant's right over the property, the same is filed.

5) The same is opposed by the learned counsel for the respondent on the ground that the property, which is the subject matter of dispute in O.S.No.59 of 2012 and in the present suit, are different and since the present suit is for execution of a contract, to which the petitioner is not a party, his impleadment to the said proceedings cannot be accepted.

6) The learned counsel for the respondent placed reliance on the judgments of the Apex Court in **Kasturi v. Iyyamperumal and others**¹ and also the judgments of this Court in **Pallapu Mohanarao (died) per LRs and others v. Thammisetty Subba Rao and others**² and **Matta@Palina Bhavani and another v. Matta Tulasi Rao and**

¹ 2005(4) ALT 19(SC)

² 2012(1) ALT 30

others³ in support of his plea. Order I Rule 10 of the C.P.C., speaks about impleadment of necessary and proper party to the suit. As long as the impleadment of any party does not widen the scope of the suit or change the nature of the suit, the Court may not have any objection to implead the applicant as a party to the suit, if the petitioner is able to show that he has some right over the property. The three judgments referred to by the learned counsel for the respondent are about the impleading of the party in the matters relate to specific performance of contract of sale, specific performance of agreement of sale and contract of sale.

7) The present suit is filed against the defendant for recovery of an amount of Rs.9,76,613/-, on the basis of a registered simple mortgage deed, which is alleged to have executed by the defendant as security in favour of the plaintiff. As the defendant failed to pay the amount, a legal notice dated 20.04.2012 came to be issued to discharge the loan amount. The said notice is alleged to have been avoided by the defendant which was returned on 01.05.2012. As the defendant postponed payment of money on one pretext or the other, the present suit came to be filed. Hence, the judgments relied upon may not apply to the case on hand.

8) It is no doubt true that the petitioner herein filed O.S.No.59 of 2012 on the file of the II Additional District Judge, Madanapalle,

³ 2014(5) ALT 360

seeking rights over the property situated in Sy.No.419-2 to the extent of Ac.12.72 cents paiki Ac.2.00. But the present suit i.e., O.S.No.371 of 2012 on the file of Principal Senior Civil Judge, Madanapalle, in which the petitioner wants to get himself impleaded is a suit which was filed for recovery of money, which is purely between two parties. The determination of the suit would not crystallize or create rights over the said property either in favour of plaintiff or defendant. In case, if the suit is decreed and if the defendant therein fails to repay the amount inspite of the decree, then the plaintiff therein may take steps for execution of the said decree basing on the registered simple mortgage deed. Till such time the petitioner/proposed party will not get any right to implead himself in the said suit. Even assuming for a moment that the petitioner has a right the property, he can claim the same, in the suit, filed by him vide O.S.No.59 of 2012.

9) Since the present dispute is a contract between the two persons and as the rights of the parties over the property are not decided in this suit, this Court is of the opinion that it may not be necessary to implead the petitioner as a party in this suit.

10) Having regard to the above, this Court is of the view that the application made by the petitioner is liable to be rejected.

11) Accordingly, the C.R.P. is dismissed. No costs. As a sequel to it, miscellaneous petitions pending if any in this C.R.P., shall stand closed.

C. PRAVEEN KUMAR, J

Date:02.12.2016

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