

THE HON'BLE SRI JUSTICE A.V. SETHA SAI

CIVIL REVISION PETITION No.3097 of 2011

ORDER:

The plaintiff in O.S.No.12 of 2009 on the file of the Court of the Senior Civil Judge, Puttur, Chittoor District is the petitioner in the present revision, filed under Article 227 of the Constitution of India.

This revision challenges the order, dated 24-06-2011 passed by the said Court in I.A.No.578 of 2009 filed by the petitioner under Order 1 Rule 10 of Code of Civil Procedure, seeking impleadment of the proposed defendants/ respondents 4 to 12 herein.

Heard and perused the material available before this Court.

The petitioner herein instituted O.S.No.12 of 2009 against the respondents 1 to 3 herein for partition of the plaint schedule properties into four shares and for allotment of one such to the plaintiff and the defendants.

The 1st defendant filed a written statement, resisting the suit. In the said suit the plaintiff/petitioner herein filed the present I.A.No.578 of 2009 under the provisions of Order 1 Rule 10 of Code of Civil Procedure, seeking impleadment of the respondents 4 to 12 herein as defendants 4 to 12 in the suit.

The respondents herein resisted the said application by way of filing counters. The learned Senior Civil Judge, by way of an order, dated 24-06-2011 dismissed the said application. Calling in question the validity and the legal sustainability of the said order

passed by the learned Senior Civil Judge, dismissing I.A.No.578 of 2009, the present revision came to be filed.

It is contended by learned counsel for the petitioner that the order passed by the learned Senior Civil Judge is erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Order 1 Rule 10 of the Code of Civil Procedure; that had the contents of the affidavit filed in support of the application been considered the order impugned in the revision would not have emanated and that the reasons assigned by the learned Senior Civil Judge for dismissing the application are neither tenable nor sustainable in the eye of law. It is further submitted by learned counsel for the petitioner that if the application filed by the petitioner herein is allowed it would avoid the multiplicity of litigation.

On the contrary, it is submitted by learned counsel for the respondents that there is no illegality nor there exists any infirmity in the impugned order, as such, the order impugned is not amenable for any correction by this Court under Article 227 of the Constitution of India. It is further contended that since the learned Senior Civil Judge assigned cogent and convincing reasons the revision filed by the petitioner herein does not warrant any indulgence of this Court. It is further submitted that the order passed by the Court below is strictly in accordance with the provisions of Order 1 Rule 10 of the Code of Civil Procedure.

In the above backdrop now the issue that emerges for consideration of this Court is:

Whether the order passed by the Court below, in the facts and circumstances of the case is sustainable and tenable and whether the same warrants any interference under Article 227 of the Constitution of India?

The material available before this Court manifestly discloses that resisting the suit instituted by the petitioner herein, the 1st defendant who is no other than the husband of the proposed 4th defendant/4th respondent herein filed written statement and at paragraph No.7 of the said written statement it is stated that all the four sons of Utukuru Narasimhulu Chetty and their Progeny are in joint possession and enjoyment of item No.1 of the plaint schedule property even on the said date.

The case of the petitioner is that she instituted the suit on 02-02-2009 and the learned Senior Civil Judge granted order of *status quo* and between 11-02-2009 and 20-02-2009 the proposed respondents 5 to 11 executed sale deeds in favour of the proposed respondent No.4 (wife of 1st defendant) in respect of item No.1 of the plaint schedule property. It is also the case of the petitioner herein that the 1st defendant is a document writer, undertaking job work at Sub-Registrar Officer, Puttur and got created sham and nominal registered documents in favour of his wife (proposed respondent No.4 herein). It is also the case of the petitioner that the said documents have been created knowing fully well that there is *status quo* order and the children of the petitioner are residing in the said property.

In the above background it is the contention of the learned

counsel for the petitioner that for arriving at just and reasonable conclusion, the presence of respondents 4 to 12 is highly essential and they are proper and necessary parties for the suit.

A perusal of the order impugned in the revision discloses that the learned Senior Civil Judge held that the 4th respondent in her counter did not express her willingness to come on record as such she need not be added as a party to the suit.

A reading of the questioned order clearly discloses that the court below did not consider the issue as to whether the proposed respondents are proper and necessary parties for the litigation and did not make any exercise in the light of the provisions of Order 1 Rule 10 of Code of Civil Procedure. This in the considered opinion of this Court cannot be approved.

Having regard to the nature of allegations and averments in the affidavit filed in support of the application and having regard to the transactions that have taken place, pending suit, after the order of *status quo* granted by the Court below, this Court is of the considered opinion that there can be a quietus for the entire litigation in the event of the proposed respondents being added as defendants in the suit.

In view of the above reasons, this Court has absolutely no scintilla of hesitation to hold that the impugned order passed by the learned Senior Civil Judge cannot be sustained in the eye of law.

For the aforesaid reasons, the revision is allowed, setting

aside the order, dated 24-06-2011 passed by the learned Senior Civil Judge, Puttur in I.A.No.578 of 2009 in O.S.No.12 of 2009 and consequently the said I.A.No.578 of 2009 stands allowed, ordering impleadment of the proposed respondents as defendants 4 to 12 in the suit. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.V. SSHA SAI, J

March 09, 2016

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THE HON'BLE SRI JUSTICE A.V. SETHA SAI

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