

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION NO.1791 OF 2015

ORDER:

This Civil Revision Petition is filed challenging the order, dated 09-12-2014 in I.A.No.2313 of 2009 in O.S.No.19 of 2009 on the file of the III Additional District Judge, East Godavari at Kakinada.

2. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the 1st respondent.

3. 1st respondent herein-plaintiff filed O.S.No.19 of 2009 seeking partition and separate possession of the plaint schedule properties into 9 equal shares according to the partnership deed, dated 06-02-1995 and allotment of 1/20th share to the plaintiff. In the said suit, he also filed the above interlocutory application under Order I Rule 10 and Section 151 CPC to implead the respondents 11 to 25 as defendants in the main suit stating that they are tenants in the suit schedule property. Even though he issued notices on 21-07-2008 and 22-07-2008 for deposit of rents until the accounts are settled among the partners, they refused to receive the same and they were also not depositing the rental amount. It is also stated that he filed another application against them seeking deposit of rents. In those circumstances only, he sought impleadment of the respondents 11 to 25 as defendants 11 to 25 in the main suit.

4. In the said interlocutory application, respondents 1 to 8 filed counter stating that when the plaintiff issued a registered notice on 04-03-2008, the 1st defendant issued a reply on 31-07-2008. They further stated that they are not aware of the alleged legal notice issued to the tenants. However, the tenants are bound to pay the rents to the landlord, the managing partner, who is the 1st defendant. It is also stated that the proposed respondents 11 to 25 are not proper and necessary parties to the suit.

5. The trial Court after considering the material on record, allowed the application observing as follows:

“The suit is for partition of properties among the family members. The plaintiff is intending to implead the tenants as parties. While deciding

the rights and liabilities of the parties over the properties, the tenants absolutely not necessary parties. However, they can be treated as proper parties and in absence of any bar to add proper parties, adding the tenants are parties, for more clarity, while deciding rights and liabilities and to avoid multiplicity of litigation in the interest of justice adding them as parties found not objectionable.”

6. Admittedly, the proposed parties are tenants and have being paying the rents to the partnership firm from the dates of their tenancy. Merely because the plaintiff filed the suit for partition, the tenants cannot be impleaded in a suit for partition arising out of cause of action between the plaintiff and the defendants 1 to 8. The scope of the suit cannot be expanded by including the tenants as parties to the suit. If any directions are sought from the trial Court with regard to the rents, then it is for the trial Court to take up that application without impleading the proposed parties as defendants to the suit. In the circumstances, the order passed by the trial Court is not proper and the tenants cannot be impleaded as parties to the suit in a suit for partition between the plaintiff and the defendants 1 to 8.

7. Accordingly, the Civil Revision Petition is allowed setting the impugned order, dated 09-12-2014 in I.A.No.2313 of 2009 in O.S.No.19 of 2009 on the file of the III Additional District Judge, East Godavari at Kakinada. No order as to costs. Miscellaneous petitions, if any pending in this petition shall stand closed.

A.RAMALINGESWARA RAO, J

DATED: 18-01-2016

Hsd