

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 3302 OF 2016

ORDER:

This civil revision petition is filed against order dated 01.04.2016 in dismissing the application viz., I.A.No.246 of 2015 in O.S.No.155 of 2014 filed by the petitioners/proposed defendants under Order I Rule 10 CPC.

2. It is the case of the petitioners that an extent of Ac.95.80 cents of dry land situated in Vedicherla Village in Survey No.165 is a common grazing land and the rights over which have been initially granted to 53 pattadars. Petitioners' grandfather also has been included in the said pattas. Now, the suit came to be filed by respondent Nos.1 to 7 against respondent Nos.8 to 12 seeking partition of the left over land after deducting the land, which was acquired by the Railways and for the purpose of excavation of Telugu Ganga Canal. To support their case that they are necessary parties to the suit and seeking to apportion a portion of the land in Survey No.165, petitioners filed proceedings of the Revenue Divisional Officer (RDO) dated 15.02.2010 suspending the pattadar passbooks granted by the Tahsildar in favour of some of the respondents/plaintiffs.

3. The court below taking into consideration of the fact that the RDO proceedings were *sub judice* before this Court in the writ petition viz., W.P.No.7998 of 2011 filed by respondent Nos.1 to 7 and there

being no other material placed before it to support the claim of the petitioners, dismissed the IA refusing to add petitioners as defendants in the suit.

4. Sri M.Sudheer Kumar, learned counsel for the petitioners, submits that as on the date of presentation of the IA i.e., 26.08.2015, the order of the RDO was in force and only after filing of the IA petitioners came to know that the said order of the RDO has been set aside by this court. Learned counsel submits that as the petitioners have other material particularly the entries in the resurvey and resettlement Register and 10(I) Account establishing their right over the land in Survey No.165, the orders in I.A.No.246 of 2015 may be set aside and the case may be remanded for fresh consideration.

5. Sri P.Sridhar Reddy, learned counsel for the respondents, opposing the submission of the learned counsel for the petitioners submits that the court below passed the impugned order after taking into consideration of the material available on record and further submits that except the order of the RDO, there is no other material placed by the petitioners before the court below in support of their case and that as on 26.08.2015, itself the order of the RDO was set aside on account of the final orders passed by this court in W.P.No.7998 of 2011. Learned counsel further submits that as the very right and entitlement of Survey No.165 is in doubt and being denied, petitioners may have independent right to initiate proceedings but

cannot be impleaded as defendants in the suit filed by respondent Nos.1 to 7 against respondent Nos.8 to 12, which is a suit for partition.

6. In the facts and circumstances of the case, it may be noted that the only document which has been placed before the court below by the petitioners to show a semblance of right to be impleaded as party defendants in the suit, i.e., the proceedings of the RDO, whereunder the pattadar passbooks granted in favour of respondent Nos. 1 to 7, was itself under cloud. As a matter of fact, the very proceedings of the RDO came to be set aside by this court on 26.08.2015 i.e., the very date on which the petitioners filed the impugned application seeking to be added as parties-defendants in the suit. Except the said proceedings of the RDO, there was no other material that was placed before the court below.

7. In those circumstances, the order of the court below cannot be found fault with as *prima facie* there was no material in the court to come to the conclusion that adding of the petitioners as party defendants as necessary and proper for the purpose of determining the lis in the suit i.e., O.S.No.155 of 2014 filed by respondent Nos.1 to 7 seeking relief as against respondent Nos.8 to 12, cannot bind the petitioners if they otherwise has independent rights in Survey No.165. Even otherwise nothing prevents the petitioners from initiating independent proceedings to assert their right in Survey No.165 based on the material available with them. In those circumstances, the order of the court below does not call for any interference by this court.

However, leaving it open to the petitioners to work out their remedies in accordance with law.

Accordingly, the Civil Revision Petition is dismissed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

JUSTICE CHALLA KODANDA RAM

December 16, 2016
LMV

