

HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No. 5728 OF 2015

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is filed by the unsuccessful plaintiffs 2 and 3 assailing the orders dated 04.09.2015 of the learned XIII Additional District Judge, Ranga Reddy District passed in I.A.No.81 of 2015 in O.S.No.579 of 2009 filed by the proposed third defendant under Order I rule 10 read with Section 151 of the Code of Civil Procedure, 1908, requesting to implead the proposed third defendant as party third defendant in the suit and direct the plaintiffs to consequently amend the plaint.

2. I have heard the submissions of the learned counsel for the revision petitioners/plaintiffs 2 and 3 ('Plaintiffs', for brevity) and the learned counsel for the first respondent/proposed third defendant ('proposed third defendant', for brevity). The first plaintiff died even during the pendency of the proceedings before the trial court. The other respondents 2 and 3, who are defendants 1 and 2 in the suit, are stated to be not necessary parties.

3. I have perused the material record.

4. To begin with, the preliminary facts, in brief, are as follows:

The suit was brought by plaintiffs 1 and 2 against the first defendant/Union of India and the second Defendant-Defence Estate Officer for declaration of ownership of the plaintiffs in respect of Ac.3-38 guntas in S.Nos.602 and 603 of Alwal Village of Malkajgiri Mandal, more fully described in the schedule annexed to the plaint, and for recovery of possession of the plaint schedule property. On the death of the first plaintiff, the third plaintiff was impleaded as per the orders of the trial court dated 20.01.2014 in I.A.No.54 of 2014. During the

pendency of the said suit, the proposed third defendant had filed the aforementioned application for her impleadment as party-third defendant in the suit. At the hearing, no oral and documentary evidence was adduced. On merits, and by the order impugned, the trial court had allowed the petition and had permitted the proposed third defendant to be impleaded as the third defendant in this suit. Therefore, the aggrieved plaintiffs 2 and 3 filed this revision petition.

5. Before proceeding further, it is necessary to state the pleadings of the parties.

6. The case of the proposed third defendant in support of her request for her impleadment as third defendant in the suit, in brief, is this:

One late B.Radhamma was the absolute owner and possessor of various lands in different survey numbers of Alwal Village. She was the Inamdar of the lands in Survey nos.602 and 603 of the said Village. The suit property is a part of the said survey numbers. She had executed a Will dated 02.02.1976 and got it registered on 17.02.1976. Under the said Will, she had bequeathed all her properties. The land in Survey nos.602 and 603 was bequeathed in favour of late S.P.Bhaskara Rao, the natural father of the proposed third defendant. Some other lands in the occupation of the tenants were also bequeathed. Therefore, Late S.P.Bhaskara Rao is the successor in respect of the land in Survey nos.602 & 603 of the said Village. For that precise reason, one Late B.Ramachander Rao, who is the brother of late S.P.Bhaskara Rao, obtained a registered General Power of Attorney dated 26.04.1976 from the said late Bhaskara Rao. Acting under the said General Power of Attorney (GPA), late B.Ramachander Rao filed W.P.No.13412 of 1994 questioning the order dated 25.04.1994 of the Joint Collector, Ranga Reddy District where under the Occupancy Rights Certificate (ORC) was

granted in favour of the plaintiffs herein over an extent of Ac.48-39 guntas. The said writ petition was dismissed by this Court on 27.01.1999. Aggrieved by the same, late Ramchandra Rao on his own behalf, and as GPA Holder of Bhaskar Rao and his sons filed W.A.NO.477 of 1999. Under the guise of the said GPA, late B.Ramachander Rao entered into a compromise with the plaintiffs 1 and 2 herein and accordingly a compromise was recorded by this Court vide judgment dated 20.04.1999. Now the plaintiffs are seeking declaration of ownership by virtue of the compromise recorded by this Court as stated above. The proposed defendant, who is the daughter of Bhaskara Rao, was given in adoption to late B.Ramachander Rao on 30.10.1963. One B.Narsing Rao was also given in adoption to late B.Ramachander Rao in the year 1955. Though late B.Radhamma bequeathed all her properties in favour of late S.P.Bhaskar Rao, as per clause (c) of registered Will of late Radhamma, late B.Ramchander Rao obtained General Power of Attorney from his brother S.P.Bhaskar Rao and was dealing with properties. The proposed third defendant filed O.S.No.87 of 2011 on the file of the Court of the learned I Additional District Judge, Ranga Reddy District against the proposed third defendant's brother Narsing Rao and his sons for partition. The said suit is also now pending on the file of the XIII Additional District Court, Ranga Reddy District. The said Bhaskar Rao died on 31.01.2010 executing a Will dated 18.07.2009 in favour of the proposed third defendant. Therefore, the proposed third defendant is the successor of the properties that originally belonged to Late Radhamma and which fell to the share of Bhaskar Rao. Late Bhaskar Rao was never informed of any of the transactions in respect of his GPA and he was kept in dark. On the death of late Bhaskar Rao on 31.01.2010, the proposed third defendant came to know about the details of the transactions entered into by Late Ramachander Rao. Late Ramachander Rao signed the compromise Memo as GPA on behalf of the Bhaskar Rao though he was not competent to enter into the

compromise as per the terms of Registered General Power of Attorney of late Bhaskar Rao dated 26.04.1976. Therefore, the compromise was entered into by an incompetent attorney on behalf of Bhaskara Rao. Radhamma was the Inamdar of the lands in S.nos.602 and 603 admeasuring Ac.36-20 guntas along with some other lands in some other survey numbers, which are not subject matter of the *lis*. The above land was under the lease of the second defendant-Defence Estate Officer, Secunderabad by virtue of lease deed dated 21.09.1973. The second defendant was in possession with effect from 25.02.1963, since Military authorities were in occupation prior to the execution of the lease deed. Apart from that, there was also land admeasuring Ac.7-07 guntas out of total area of Ac.13-19 guntas in Survey nos.349, 350, 351 and 352 and the same was leased out by Narsing Rao, the husband of Radhamma, to one Namasivayam, the father of the plaintiffs 1 and 2 herein. An extent of Ac.1-00 in the above said survey numbers was acquired by the Social Welfare Department from Radhamma and compensation was paid to her. The plaintiffs 1 and 2 claiming to be the Legal Representatives of Namasivayam laid a claim for the land in Survey nos.602 and 603 of Alwal Village. Proceedings went on before different authorities and ultimately the Joint Collector, Ranga Reddy District granted ORC in respect of the land in Survey nos.602 and 603 in favour of plaintiffs 1 and 2 and the said proceeding was impugned in W.P.No.13412 of 1994. On the dismissal of the said WP, an appeal in W.A.No.474 of 1999 was preferred. The Compromise that was recorded on 20.04.1999 is vitiated by fraud and is not valid as Ramachander Rao is not competent to sign the compromise on behalf of Late Bhaskar Rao. Therefore, the proposed third defendant filed WAMP before this Court seeking the review of the judgment in W.A.No.474 of 1991. An application to grant leave to seek review is also filed and the same is pending. After disposal of W.A.No.474 of 1999, the Revenue Divisional Officer vide his proceedings dated 15.07.1999 granted ORC to the respective parties in

terms of the compromise memo. The second defendant-Defence Estate Officer addressed letter to the said Revenue Divisional Officer questioning the ORC granted to the plaintiffs 1 and 2 in respect of the lands i.e., Ac.14.36 cents and Ac.9.24 cents in S.nos.602 and 603 respectively *inter alia* alleging that Ac.3-95 cents belongs to the Defence authorities and sought cancellation of the ORC granted as above. The Revenue Divisional Officer advised the defence Department to prefer an appeal before the Joint Collector. An appeal appears to have been filed; and the matter was remanded by an order dated 15.11.2003 to the Revenue Divisional Officer, Chevella. The Revenue Divisional Officer once again confirmed the orders dated 15.07.1999; against the said orders, the second defendant-Defence Estate Officer had filed an appeal before the Joint Collector. The claim of the Defence Estate Officer, third defendant, is limited to an extent of Ac.3-95 in the land for which ORC was granted to plaintiffs 1 and 2. However, the Joint Collector had set aside the ORC granted to plaintiff s 1 and 2 and also that of late Bhaskar Rao though there was no claim against the land for which ORC was granted. Therefore, aggrieved by the order of the Joint Collector, the plaintiffs 1 and 2 had preferred W.P.No.6522 of 2008 before this Court. The said WP was allowed by order dated 30.04.2009 setting aside the order of the Joint Collector dated 06.02.2009 and the matter was remitted to the Joint Collector to confine his consideration to the extent of inclusion of the Ac.3-95 cents of land in Survey nos.602 and 603 of Alwal Village. Against the said order, the Defence Estate Officer filed Writ Appeal viz., W.A.No.900 of 2010 and the same was allowed by this Court by order dated 11.03.2011. After coming to know of the said proceedings-proposed third defendant filed W.P.No.21125 of 2011 before this Court as against the order dated 06.02.2007of the Joint Collector so far as it related to setting aside of ORC to an extent of Ac.5-03 guntas in Survey no.602 and Ac.6-37 guntas in Survey no.603 of Alwal village and the same is pending. As on the date of filing of the above writ petition,

the plaintiffs 1 and 2 filed W.A.M.P.No. 610 of 2011 against the orders in W.A.No.900 of 2010 and the same is pending. Since the review petition is pending, this Court admitted W.P.No.21125 of 2011 filed by the proposed third defendant. Ultimately, this Court by order dated 12.08.2011 in Review WAMP No.610 of 2016 in W.A.No.900 of 2010 allowed the said review and dismissed the writ appeal and consequently restored the order of the single Judge passed in W.P.No.6522 of 2008. Namah Sivaya was given on lease, the lands in Survey nos.349, 350, 351 and 352; but, not any land to an extent of Ac.36-20 guntas in Survey nos.602 & 603 of Alwal Village as being claimed by the plaintiffs.

Therefore, the claim of the plaintiffs in respect of Ac.36-20 guntas in Survey Nos.602 and 603 as being claimed by the plaintiffs. Therefore, the claim of the plaintiffs in respect of Ac.36-20 guntas in Survey Nos.602 and 603 is factually incorrect. Therefore, the proposed third defendant filed Review WA MP before this Court as the compromise recorded by this Court was vitiated by fraud played by Ramachander Rao. The very basis of the present suit claim is in question in the writ proceedings. The second defendant Defence Estate Officer filed an SLP before the Supreme Court against the order passed in WAMP No.610 of 2011. The proposed third defendant also filed an interlocutory application for her impleadment in the SLP. Since the suit claim of the plaintiffs 2 and 3 only on the basis of the compromise recorded in W.A.No.474 of 1999 is now under challenge as Review WA MP was filed by the petitioner proposed third defendant, the outcome of the present suit would adversely impact the claim of the proposed third defendant. Therefore, the proposed third defendant is necessary party to the suit.

Hence, the present petition is filed for her impleadment as party third defendant in the suit.

7. On the other hand, the case of the plaintiffs 2 and 3, in brief, is this:

The material allegations in the affidavit of the proposed third defendant questioning the competence of Ramachander Rao to enter into the compromise and the validity of the compromise are all false. Bhaskar Rao during his life time never disputed the right of the attorney to enter into the compromise and he had accepted the compromise in his alleged Will Deed dated 18.07.2009 and had bequeathed the properties that had fallen to his share. Thus, Bhaskar Rao himself had accepted the compromise. The petitioner, who is claiming the title under the Will, cannot now turn round and plead contra. The review petition said to have been filed by the proposed third defendant is not within the knowledge of plaintiffs 2 and 3. The contents of paragraph no.6, which deal about the various proceedings borne out on record require no answer. Filing of W.P.No.21125 of 2011 is not within the knowledge of plaintiffs 2 and 3. The review petition filed by the plaintiffs 2 and 3 was allowed on 12.08.2011 and consequently Writ Appeal was dismissed and the order of the learned Single Judge in W.P.No.6522 of 2011 was restored. However, the other material allegations in the entire affidavit of the proposed third defendant are contrary to the facts and are denied.

Filing of SLP before the Supreme Court by the fifth respondent against the orders passed in Review WA MPNo.610 of 2011 is not a ground for the impleadment of the proposed third defendant as party to the suit.

The proposed third defendant is not a necessary party to the suit and her application is liable for dismissal.

8. At the hearing before the trial court, no documents are exhibited. No oral evidence was adduced. By a cryptic order, which is unsupported by reasons, the trial court had allowed the petition of the proposed third defendant. In the cryptic order the reasons assigned in the operative portion is as follows:

“So many facts were narrated by the petitioners which requires her attendance in the suit for the proper appreciation of the question in issue.

The suit is filed for declaration of title and for recovery of possession. There is connected part heard suit filed by the petitioner herein vide O.S.No.87

of 20911 in respect of these lands.

Therefore, for avoiding multifarious litigation and for proper presentation of the facts, I feel that the petitioner can be permitted to be impleaded as defendant No.3 in the suit.

In the result, the petition is allowed.”

{reproduced verbatim}

A reading of the order would show that the order was passed without adverting to the contentions of both the parties and the contents of any material documents and also without assigning any reasons. The learned counsel for plaintiffs 2 and 3 while assailing the above said orders of the court below mainly contended the order being a cryptic and unreasoned order is unsustainable both on facts and in law.

The proposed third defendant while supporting the orders of the court below would submit that though the order is not a reasoned order, the conclusion is correct in view of the complexity of facts and the various proceedings pending before this Court and the revenue authorities. He had finally urged that the order can be sustained.

9. I have noted the submissions. Though several documents were referred to in the affidavit of the proposed party/implead petitioner and also in the counter of the plaintiff, no documents were exhibited on either side at the time of hearing of the interlocutory application before the trial Court. Therefore, the contents of the documents of the parties were not adverted to and not considered by the Court below. When an Interlocutory Application seeking impleadment is filed by a third party, the Court has to necessarily look into the documents of both the parties and examine the contents thereof to find out as to whether the pleadings find support from the recitals in the respective documents. No just decision as regards *locus standi*, interest and the entitlement of the proposed party to be impleaded in the suit can be made without looking into the documentary evidence that is referred to in the pleadings and sought to be relied upon by both the parties. In the light of the contentions urged by both the parties, it is necessary to refer to and

carefully examine the recitals in the documents before coming to a just decision in the matter. Unless the documents filed by both the parties are exhibited, the documents will not be sent to this Court from the trial Court along with the lower Court records. Unless the documents are before this Court and are duly exhibited, it is neither possible nor is just and proper to appreciate the rival contentions. The trial Court ought to have allowed the parties to have their documents exhibited before disposing of the interlocutory application on merits. Even in a case where the parties failed to make a request to exhibit their documents for consideration in the interlocutory application, it is the duty of the Court to see that the necessary documents are exhibited. It is not a case where the parties specifically opted not to exhibit the documents for one reason or the other. Rule 60 of the Civil Rules of Practice says that the enquiry into an interlocutory application shall be conducted by receiving affidavits, but if the Judge directs that the evidence be given orally, then it shall be recorded and the exhibits be marked in the same manner as in the case of suits. This Court in a decision in **A.P. Minerals Development Corporation Limited Hyderabad v. M/s. Trimex Minerals Pvt. Ltd.**,^[1] and in another decision in **Bhopal Reddy and another v. K.Lakshmi Bhai and another**^[2] held that the practice of marking the documents in the interlocutory application only shall be continued. It is thus obvious that the documents filed by either of the parties shall have to be marked, unless the parties specifically opt for not marking either on the ground of inadmissibility or for some other reasons of their own. In these circumstances, it is just and proper to allow the revision and remand the matter to the trial Court for disposal of the IA afresh, on merits, after following the procedure established by law, which was adverted to supra.

10. For the reasons assigned, the Civil Revision Petition is allowed and the order and the decretal order of the trial Court in I.A.No.81 of

2015 are set aside and the said IA is remitted to the trial Court with a direction to give an opportunity to both the parties to exhibit their respective documents and then dispose of the said application afresh, on merits and in strict accord with the procedure established by law.

There shall be no order as to costs.

As a sequel, the miscellaneous applications pending, if any, shall stand closed.

JUSTICE M.SEETHARAMA MURTI

15th June, 2016

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HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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15th June, 2016

[\[1\]](#) 1998(1) ALT 182
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