

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

C.R.P.No.3285 of 2016

ORDER:

Plaintiffs in O.S.No.21/2013 on the file of the Court of the Junior Civil Judge, Tadipatri, Anantapur District are the petitioners in the present revision filed under Article 227 of the Constitution of India. This revision challenges the order dated 29.04.2016 passed by the said Court in I.A.No.301/2016. Petitioner herein instituted the suit for the following relief:

“Hence, it is therefore prayed that the Honourable Court may be pleased to pass a decree and judgment in favour of the plaintiff and against the defendant by way of preliminary decree declaring 1/4th joint right of the plaintiffs to the suit property.”

2. The first defendant filed written statement resisting the plaint averments. In the said suit plaintiffs/petitioners herein filed I.A.No.301/2016 under the provisions of Order 1 Rule 10 of the Code of Civil Procedure seeking impleadment of the fourth respondent herein as defendant No.4 in the suit and for consequential amendments in the schedule as specified in the schedule of the petition.

3. The defendant/first respondent herein filed a counter resisting the said application. The learned Junior Civil Judge by way of an order dated 29.04.2016 dismissed the said application.

4. Challenging the validity and legal sustainability of the said order, the present revision has been filed.

5. Heard Sri Venkat Reddy Chittem, learned counsel for the petitioners and Sri V.Hari Haran, learned counsel for the first respondent. In spite of service of notice, none appears for the respondents 3 and 4.

6. It is contended by the learned counsel for the petitioners that the order impugned is erroneous, contrary to law and opposed to the very spirit and object of the provisions of Order 1 Rule 10 of the Code of Civil Procedure. It is further submitted that had the contents of the affidavit filed in support of the application been considered from proper perspective, the questioned order would not have emanated. It is further submitted by the learned counsel that in the event of allowing the application the defendant would not suffer any prejudice and on the other hand, the same would be helpful for the Court to completely adjudicate the matter. According to the learned counsel for the petitioner, the reasons assigned by the learned Judge are neither valid nor cogent. In support of his submissions and contentions, learned counsel for the petitioners places reliance on the judgment of a Division Bench of this Court in the case of **RAMADER APPALA NARASINGA RAO**^[1].

7. On the contrary, it is vehemently contended by the learned counsel for the first respondent that there is no illegality nor there exists any material infirmity in the impugned order and in the absence of the same, the order impugned is not amenable for any judicial review under Article 227 of the Constitution of India. It is further submitted by the learned counsel for the first respondent that there is absolutely no explanation for the delay in filing the application, though the first defendant in the written statement had taken the plea of non-joinder of parties as long back as on 08.09.2014 and despite the suggestions made to PW.1 during the course of cross-examination on 21.12.2015. It is also the submission of the learned counsel for the first respondent that in view of suggestion made to the first defendant as DW.1 at the time of cross-examination on behalf of the plaintiffs that the proposed defendant was given a house, there is absolutely no justification on the part of the plaintiffs to pray for impleadment of the proposed defendant.

8. In the above backdrop, now the question that boils down for

consideration of this Court is_ “Whether the order under challenge passed by the learned Senior Civil Judge is in accordance with the provisions of Order 1 Rule 10 of the Code of Civil Procedure or warrants any interference of this Court under Article 227 of the Constitution of India?”.

9. The information available before this Court vividly discloses that the first defendant/first respondent herein filed a written statement on 08.09.2014, resisting the plaint averments. In the said written statement which is placed on record along with the C.R.P as a material paper, it is stated that Smt. Kadiramma is having one daughter by name Venkat Laxmamma and she is at Thadipatri, Anantapur District. In the written statement, prior partition is also pleaded. Plaintiff as PW.1 was cross-examined by the learned counsel for the first defendant/first respondent herein on 21.12.2015. In the said cross examination, PW.1 categorically deposed that it is true that his grand parents are also having a daughter by name Venkata Lakshamma. It is also significant to note that during the course of cross-examination of the first defendant by the learned counsel for the plaintiffs, it was suggested as to whether Venkata Lakshamma was given a house built by her younger brothers to her safe. There is absolutely no plausible explanation offered by the petitioners as to the delay in filing the application. A perusal of the impugned order clearly shows that the learned Judge took into consideration all these aspects and dismissed the application filed by the petitioners herein. In the considered opinion of this Court the reasons recorded by the learned Judge are valid and do not warrant any interference nor this Court is inclined to meddle with the said order passed by the learned Judge. It is a settled and well established proposition of law that unless the order impugned suffers from patent perversity, the invocation of jurisdiction of this Court under Article 227 of the Constitution of India is impermissible. The Judgment of this Court reported in ***RAMADER APPALA NARASINGA RAO*** (*supra*), in the facts and circumstances of the case, would not render any assistance to

the petitioners herein. In fact, there is absolutely no dispute with regard to the principle laid down in the said judgment.

10. In view of the above reasons, the CRP is dismissed. As a sequel, miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:19.08.2016

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Dated: 19.08.2016

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