

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION NOS.3509, 3525 AND 3562 OF 2016

COMMON ORDER:

These three Civil Revision Petitions are disposed of by this common order as they arise out of the preliminary decree passed in O.S.No.287 of 2011 on the file of the Principal Senior Civil Judge, Ongole.

It appears that in the said suit, which was filed for partition, preliminary decree was passed on 09.07.2012. The said suit was filed by the petitioner herein against respondents 2 and 3. When the final decree proceedings are pending in I.A.No.446 of 2013, the third parties filed I.A.Nos.627, 629 of 2014 and 1018 of 2015 respectively seeking impleadment on the ground that they purchased the property involved in the final decree proceedings. When the said applications were allowed by orders dated 29.02.2016, against the said orders, the present Civil Revision Petitions are filed.

The petitioner filed counter to the applications filed by the third parties and seriously contested the case. But the trial Court allowed the applications of the third parties with the following observations.

“Since the present petition is filed under Order-I, Rule 10 of CPC to implead some third party as party to the final decree petition, it is necessary to consider the relevant provision that govern the field, which is Order-I, Rule 10 CPC.

It envisages that the Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to

adjudicate upon and settle all the questions involved in the suit, be added.

Thus, the above provision can be invoked either by the plaintiff or defendant as the case may be to add any party to enable the Court to effectively and completely to adjudicate upon and settle all the questions involved in the proceedings. There are two requirements that are to be satisfied for determining the question as to whether it is necessary to add any party, firstly there must be a right to some relief against such party in respect of the controversy involved in the proceedings and secondly no effective decree can be passed in the absence of such party.

Since the petitioner is seeking right in the property claiming that she purchased the property from the co-sharers of the parties to the final decree petition, this Court deem it necessary to permit the petitioner to come on record. Accordingly, the point is answered.”

In the case of serious contest made by the original plaintiff to the impleadment, the trial Court should have seen whether the applications of the third parties should be allowed in final decree proceedings, more so when the preliminary decree determined the rights of the parties and the final decree is only for continuation of the proceedings. No such attempt was made in the impugned orders. In the circumstances, the impugned orders are set aside and I.A.Nos.627, 29 of 2014 and 1018 of 2015 are remanded to the Principal Senior Civil Judge, Ongole, for deciding the maintainability and tenability of the applications filed by the third parties and pass appropriate orders in accordance with law.

The three Civil Revision Petitions are, accordingly, allowed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(A.RAMALINGESWARA RAO, J)

18th November 2016
RRB