

HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL MISCELLANEOUS APPEAL No.804 of 2015

ORDER: *(Per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This appeal is filed by the plaintiffs in suit O.S.No.20 of 2015 on the file of II Additional District Judge at Adoni, Kurnool District. They are aggrieved by the docket order passed by the learned II Additional District Judge at Adoni, Kurnool District on 27.10.2015 in I.A.No.321 of 2015 in O.S.No.20 of 2015, which reads as under:

“Petitioner No.2 Mr. Pratap Nadipi Ranga Swamy is present. The other petitioners are absent. Advocate for the petitioners on record, is absent. The learned counsel for the respondents 6 and 7 is present and he reports ready to argue the petition, stating that there is urgency as the petitioners are enjoying the temporary injunction. Petitioner No.2 represents that his advocate is in Yemmiganur and he has not come. Petitioner No.2 presented two applications to this Court. On perusal of them it is found that those petitions are for setting aside exparte order in the suit and also in the interlocutory application against the respondent No.8/defendant No.8. So, it is very clear that the petitioner No.2 brought and submitted the petitions for setting aside the exparte orders against the respondent No.8 and that shows collusion between the parties. As the counsel for the respondents 6 and 7 is ready and pressing the Court for disposal of the petition as the counsel for the petitioners is not present and in view of all the other circumstances, the petition is dismissed with costs.”

The learned Judge has noticed that petitioner No.2 namely Pratap Nadipi Ranga Swamy, the 2nd appellant herein was present in the Court and he has also filed two applications, which are said to have been moved by the 8th defendant by name Pratap Chandrasekhar Setty. Since the 2nd petitioner in I.A./plaintiff has presented those two applications on behalf of the 8th defendant/8th respondent, the learned Judge inferred collusion “between the parties”. This appears to be an improper approach to the subject. One might take on objection for presentation of petitions on behalf of the

opposite parties, but for saying that there was collusion between the parties, there should be something much more available on record. We cannot lose sight of the fact that for want of non-availability or due to any possible inconvenience, some of the parties may be shown to a *lis* on the opposite side. That by itself need not lead to an inference that there was collusion between the parties, their interest may be common in its entirety or to a limited extent. For instance, in a suit for partition, all the opposite parties have equal subsisting interest as that of the plaintiff himself. Therefore, the learned Additional District Judge should have been little more careful while drawing the inference of collusion between the parties. This apart using the expression “parties” implies all of them. The learned Judge should not have used such imprecise words.

The learned Judge should have decided I.A.No.321 of 2015 entirely on its own merits, particularly, when respondent Nos.6 and 7 are contesting the said case and they are pressing the I.A. to be decided on merits. Since we are not satisfied that the parties have been meted a fair treatment while passing the docket order on 27.10.2015, we set aside the same and remand the matter back for consideration afresh with the hope that I.A.No.321 of 2015 will be taken up for consideration immediately and would get decided on merits before the end of April, 2016.

Accordingly, the Civil Miscellaneous Appeal stands disposed of in the above terms.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE Dr. B.SIVA SANKARA RAO

30.03.2016

ska