

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

C.R.P.No.3719 OF 2016

ORDER:

The revision petitioner is the plaintiff and respondent No.1 to I.A.No.357 of 2016 in O.S.No.1869 of 2010 covered by the impugned order dated 29.04.2016 of the XVII Senior Civil Judge, City Civil Court, Hyderabad maintained by the 4th defendant.

2. The suit lis is in between the plaintiff and defendants 1 to 3 i.e. revision petitioner and revision respondents 1 to 3. The suit claim is impugning the so called unilateral Gift Settlement executed by defendants 1 to 3 in favour of the plaintiff showing without any participation and knowledge and vested right cannot be divested.

3. The 4th defendant claims that he is no other than the brother of plaintiff and defendants 1 to 3 and he maintained a suit for partition against the plaintiff herein by showing defendants 1 to 3 also and thus, he is a necessary party to come on record in this suit impugning the cancellation of gift/settlement. He is not necessary party to the suit when not party to the Gift Settlement, but for if at all from his claim over the property and to say the transaction of gift/settlement is not binding on him and that the property is part of subject matter of the partition lis. One such is the case, the distinction was not drawn by the lower Court in allowing the application.

4. No doubt, the law is very clear that a necessary party must be impleaded by the party who maintains the lis even at least as co-defendant and without which the suit won't survive. Whereas, proper party is one, who can be considered to come on record by the Court even suo-motu where it considers just to bring on record for the

effective and complete adjudication of the lis, though the lis can be adjudicated without his presence.

5. Thus, once the lower Court comes to the conclusion in allowing impleadment as a proper party, for this Court within the limited scope of revision it hardly requires any interference, but for to say the 4th defendant since impleaded to come on record as per the order in I.A.No.357 of 2016 of the lower Court cannot set up any independent defence, muchless of the suit claim of the partition lis herein, but for if at all to sail with the defendants 1 to 3.

6. With the above observations, the revision petition is disposed of without prejudice to the contest of the parties to the two separate suit claims. There shall be no order as to costs.

Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Date: 26.10.2016
kvrn

Dr. B. SIVA SANKARA RAO, J

