

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

Civil Revision Petition No.149 of 2017

ORDER

The revision petitioner G.Narasimha Rao S/o Subba Rao is a third party to the suit O.S.No.5 of 2008 pending on the file of the Prl.Junior Civil Judge, Chirala between the revision respondents 1 to 9 who are no other than the sole plaintiff-1st respondent to the revision and other respondents are the defendants including legal heirs(R.8 and R.9/ D.7 and D.8) of revision 2nd respondent-late Tati Varalakshamma.

2. The suit filed is for the relief of permanent injunction in respect of the plaint schedule property consisting of item Nos. 1 and 2 viz; Ac.0.27cents and Ac.0.06cents respectively out of the boundaries described of total extent of Ac.8-90cents in Sy.No.575/ 1 of Chinaganjam village of Prakasam district.

3. In the long pending suit supra since 2008, the revision petitioner herein, being a third party, filed I.A.No.459 of 2016 under Order I Rule 10 CPC to implead him as 9th defendant to the suit. The averments in support of the petition for impleadment are that he purchased item No.2 of the plaint schedule property of Ac.0.06cents from respondents 2 and 9-D.1 during her lifetime and D.8-Thati Rajasekhar by virtue of sale agreement, dt. 20.11.2001 and since then in possession and also maintained a suit for specific performance in O.S.No.341 of 2004 against the D.1 and D.8 and the same was also decreed on 17.04.2001 and subsequently E.P.No.122 of 2012 filed for obtaining registered

sale deed which is pending for enquiry. During pendency of the suit, D.1-Tati Varalakshamma since died pending suit, her son by name Venkata Ramana Rao-D.7 is added as her legal heir to the suit and the plaintiff Cherukuri Poleru or his vendors D.2 to D.8 are nothing to do with the plaint schedule item No.2 and plaintiff is never in possession and enjoyment and if the plaintiff and defendants behind the back of the petitioner are allowed to proceed with the suit, his rights accrued in the suit for specific performance supra are being deprived. The D.8-R.9-Thati Rajasekhar filed counter and contested. After hearing, the trial Court dismissed the same with observation that the petitioner/third party did not file even a scrap of paper to say his possession and enjoyment of item No.2 of plaint schedule property but filed certified copy of the judgment dt.17.04.2012 in O.S.No.341 of 2004 in executing the same against D.1, her sons-D.7 and D.8 (R.2, R.8 and R.9 herein). It is also observed that even the description of the plaint schedule in O.S.No.341 of 2004 and item No.2 of the plaint schedule in O.S.No.5 of 2008 not tallying, leave about the decree and judgment dt.17.04.2012 is stayed by the appellate Court etc; and thereby nothing to implead him in the long pending suit of 2008 that too when did not state how he got knowledge all of a sudden.

4. It is impugning the said order with above contentions almost reiterated supra in the written revision grounds vis-à-vis oral submissions, the learned counsel for the petitioner-third party sought for setting aside the dismissal order by allowing the

I.A.No.459 of 2016 to implead him as a party to the suit O.S.No.5 of 2008.

5. Whereas, it is the submission of the learned counsel for the contesting respondent supra that there is nothing to interfere with the decretal order of the trial Court in dismissing the petition stating as the petitioner-third party is neither necessary nor proper party to the suit. Hence sought for dismissal.

6. It is in fact the settled law that under Order I Rule 10CPC particularly from clause-2, Court got discretion to implead any person who is either necessary or proper party to the suit. The law is also fairly settled as to necessary party is one without whose presence suit cannot be disposed of, whereas, proper party is one without whose presence the suit can be disposed of but cannot be effectively disposed of giving complete adjudication of the lis. Undisputedly, before the trial Court, the judgment and decree in O.S.NO.341 of 2004 is filed. It is for the item No.2 of the present plaint schedule property of Ac.0.06cents which the petitioner-3rd party is claiming. It is for that property, pursuant to the contract for sale of 2001 from specific performance suit of 2004 maintained ultimately decreed in 2012 and there is execution petition however, pending execution petition, the D.7 etc., maintained appeal and obtained stay of execution of the trial Court decree in suit for specific performance.

7. Once such is the case, even not necessary party for otherwise without his presence, the suit O.S.No.5 of 2008 can be adjudicated, definitely a proper party to the suit for bare injunction to contest the non-entitlement if any of the plaintiff against the defendants 2 to 8 that too from the petitioner-third party's contest is D.3 to D.6 are nothing to do and for D.1 died her legal heirs are D.7 and D.8 against whom the decree for specific performance granted and E.P. filed and pending the appeal is stayed execution.

8. Having regard to the above, the impugned dismissal order of the lower Court is liable to be set aside.

9. Accordingly and in the result, the Revision is allowed by setting aside the order, dt.10.11.2016 in I.A.No.459 of 2016 in O.S.No.5 of 2008 on the file of the Prl.Junior Civil Judge, Chirala, by permitting impleadment of the Revision petitioner-third party to contest suit as to any entitlement of the relief of permanent prohibitory injunction by the plaintiff against any of the defendants and to show what rights he got over the property in claiming through late 1st defendant's sons D.7 and D.8.

10. Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:28.11.2017
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