

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.5401 OF 2012

ORDER:

This civil revision petition is filed questioning the order dated 21.08.2012, passed by the II Additional Senior Civil Judge, Kakinada, East Godavari District in I.A.No.538 of 2012 in O.S.No.326 of 2007, wherein and whereby the application filed by the petitioners under Order I Rule 10 C.P.C seeking to implead them either as the plaintiffs or as the defendants in the suit in O.S.No.326 of 2007, was dismissed with costs of Rs.1,000/- payable to the respondents/defendants.

The main contention of the learned counsel for the petitioners is that the original owner of the suit schedule property is one Ammoru and she had a son by name Meerayya and two daughters by names Jayalakshmi and the 2nd petitioner is the husband of Jayalakshmi and that they are entitled for the shares of Jayalakshmi in the suit schedule property and that however without their presence the suit was filed and hence the impugned application was filed to implead them either as plaintiffs or the defendants.

The respondents-plaintiffs did not file any counter in the impugned I.A either opposing the application or admitting the contention of the petitioners; that the contesting defendants filed their counter opposing the impugned application stating that the plaintiffs who are the family members of Meerayya have never stated about the presence of any daughter by name Jayalakshmi to Meerayya in the plaint and that the said contention is intended only for the purpose of the impugned application since the result in the suit is likely to be passed against the plaintiffs. It is further stated in the counter that according to the plaintiffs the 1st plaintiff is the son of Meerayya, the 2nd plaintiff is the wife of Meerayya and the 3rd plaintiff is the daughter of Meerayya and that the 4th plaintiff is the sister of Meerayya and the plaintiffs at no

point of time stated about the existence of yet another sister of Jayalakshmi or their legal heirs. If really the petitioners are the legal heirs, they do not have any objection for them to be added as parties. The trial Court having considered the respective submissions and by an elaborate order dismissed the impugned application observing that the plaintiffs themselves had not recognized the petitioners as their legal heirs or anything connected with their family. If at all in the event of the plaintiffs succeeding in the suit and if the petitioners have any right with respect to the same on the said property, it would be always open for the petitioners to file a separate suit claiming their rights and share. In those circumstances, the trial Court also found that the very application itself is filed at belated stage and thus dismissed the same with costs.

Learned counsel for the petitioners reiterates the contentions as contended before the trial Court and submits that no prejudice would be caused if the civil revision petition is allowed and as a matter of fact an issue has been framed to the effect that as to whether the suit is bad for non joinder of necessary parties. In that view of the matter, learned counsel for the petitioners submits that at any rate the issue as to whether the suit is for non joinder of necessary parties is being considered and the petitioners may be brought on record to put forward their claims.

Learned counsel appearing for the respondents opposes the civil revision petition.

At the outset, it may be noted that there is no material whatsoever placed before the trial Court to support the contention of the petitioners and that they are in no way related either with the plaintiffs or with the defendants. Except filing an affidavit along with petition before the Court below, no material whatsoever has been brought on record. The respondents defendants had taken a specific plea that the plaintiffs had

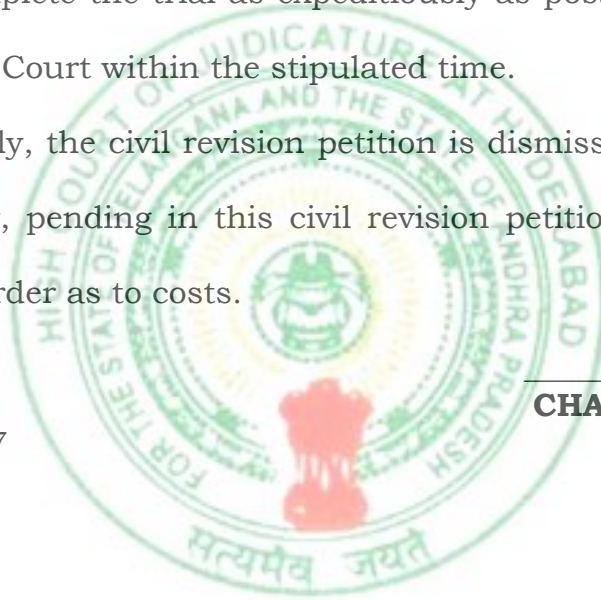
not spoken about the existence of any sister of Meerayya who is the son of Neredumilli Ammoru. It was also pleaded by the respondents defendants that the petitioners had set up a story only with an intention to delay the suit proceedings before the Court below. It may also be noted that the impugned application was filed under Order I Rule 10 CPC. A bare reading of the Order I Rule 10 CPC discloses that it has no application whatsoever and the same is intended for correction of any error in impleading the parties. It is not the case of either of the plaintiffs or the defendants that in laying the suit or written statement in defense they had erred in ordering wrong parties. So far as the issue that was framed as to whether the suit is bad for non joinder of necessary parties is concerned, the same has been framed much prior to the petitioners' filing their application seeking to implead them as parties while issues were framed on 30.11.2009 and the same does not have anything to do with the petitioners. In the absence of petitioners having any interest either in the property or any connection with the plaintiffs or defendants by placing even a prima facie material, it is for the plaintiffs to choose and add the necessary or proper parties. It may be noted that the suit is filed for declaration of title and recovery of possession of the suit schedule property from the defendants. As rightly observed by the Court below that the petitioners are claiming their right over the suit schedule property only through Meerayya. If at all they have any right over the suit schedule property, it is always open for the petitioners to file an independent suit claiming their rights. It is also a peculiar case as to whether the petitioners had filed the impugned I.A seeking them to be added either as plaintiffs or defendants. It may also be noted that only in cases of partition suits, parties would be added either as plaintiffs or defendants but not in declaratory suits as they would be sure about their rights and the petitioners ought to have decided as to whether they

should be added as plaintiffs or as defendants. In that view of the matter, as rightly observed by the Court below, the petitioners ought to have filed a separate suit. In those circumstances, there are no merits in the civil revision petition and accordingly the civil revision petition is liable to be dismissed. It may be noted that initially on 02.11.2012 this Court granted the interim stay only for two weeks and thereafter the same was extended on 18.03.2013 for another period of two weeks. Though there was no stay operating, fortunately, the trial Court had not taken any care to proceed with the trial of the suit and complete the suit proceedings. Considering the fact that the suit is of the year 2007, trial Court shall complete the trial as expeditiously as possible in view of the circulars of this Court within the stipulated time.

Accordingly, the civil revision petition is dismissed. Miscellaneous Petitions, if any, pending in this civil revision petition shall also stand dismissed. No order as to costs.

Date:03.08.2017
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CHALLA KODANDA RAM,J



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