

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.R.P.No.3797 of 2012

ORDER:

The order dated 9.4.2012 passed by the I Additional District Judge, R.R. district at L.B.Nagar, Hyderabad in I.A.No.2 of 2012 in O.P.No.981 of 2010 is under challenge in the present revision, filed under Article 227 of the Constitution of India.

2. Land admeasuring Ac.8-23 guntas was acquired and vide proceedings No.C/1175/97 dated 12.7.2002, an award was passed, referring the dispute to the Civil Court under Section 31 of the Land Acquisition Act, 1894 (for short 'the Act'). The said reference was initially numbered as O.P.No.448 of 2004. Subsequently, on an application filed by the Claimants 2 to 5, the Court ordered separation of the claim with regard to land in Survey Nos.335, 336, 337 and 338 and the same was numbered as O.P.No.981 of 2010. In the present revision, the issue is only with regard to Survey Nos.335, 336, 337 and 338 of Manchirevula village, Rajendranagar Mandal, Ranga Reddy district.

3. In O.P.No.981 of 2010, the petitioners herein, claiming right and title over the above said survey numbers, filed I.A.No.2 of 2012 under the provisions of Order 1 Rule 10 read with Section 151 of CPC, seeking their impleadment as Claimants 8 to 15. The said request was resisted by the Claimants 1 to 3 in O.P.No.981 of 2010 by way of filing counter affidavit. The learned I Additional District Judge, by way of impugned order, dismissed the said application. Hence the present revision.

4. Heard the learned counsel for the petitioners and the learned counsel for the respondents and perused the material available on record.

5. It is contended by the learned counsel for the petitioners that the questioned order is highly erroneous and contrary to law besides being opposed to the provisions of Order 1 Rule 10. It is the further submission of the learned counsel that the petitioners herein are the proper and necessary parties and they are vitally interested in the outcome of the O.P.; that the Court below did not consider the contents of the affidavit filed in support of the application from proper perspective; that in the event of application being allowed, the same would avert the multiplication of proceedings. It is the further submission of the learned counsel that if the petitioners herein are permitted to come on record, there can be a finality for the entire issue and the same would save the precious time of the Courts. It is the further submission of the learned counsel that in view of existence of the dispute as it is, the matter was referred to the Court for a decision as regards the title, as such, the Court below ought to have permitted the petitioners also to come on record to safeguard their legitimate rights in the property. In support of his submissions and contentions, the learned counsel for the petitioners herein takes the support of the decision rendered by this court in Repaka Bhyravamurthy and another v. Muppidi Venkataraju and others¹.

6. On the contrary, it is vehemently contended by the learned counsel for the respondents that there is neither illegality nor infirmity in the impugned order and in the absence of the same, the questioned order is not amenable to any judicial review under Article 227 of the Constitution of

¹ 2001(5) ALD 815

India. It is also contended by the learned counsel that the present application is a frivolous application and is not a bonafide one and having parted with the properties 30 years back, it would not be open for the petitioners herein to file the present application, claiming right over the property. It is the further submission of the learned counsel that in the impugned order, the learned District Judge recorded valid and cogent reasons for arriving at the conclusions, therefore, no interference of this Court is warranted under Article 227 of the Constitution of India.

7. In the above backdrop, now the issues that emerge for consideration of this Court are;

- (1) Whether the order impugned in the present revision is in accordance with law? and;
- (2) Whether the petitioners herein are entitled for the relief under Article 227 of the Constitution of India?

8. The petitioners herein are admittedly third parties to the proceedings. They claim title and right over the said property through their father late Mohd. Khader Khan. According to the affidavit filed in support of the present application, the father of the petitioners died on 7.1.1957 and it is also their case that their father did not alienate the subject properties to any body including the claimants. It is also their case that they, being married and settled in different places, had no knowledge of the land acquisition notification and the acquisition of the land by the State Government and they came to know of the acquisition of the property when they visited the schedule property with an intention to alienate the same.

9. On the other hand, the case of the respondents in their counter affidavit is that they purchased the subject properties by way of two registered sale deeds in the year 1979 from Mohd. Khader Khan, father of petitioners herein.

10. The learned District Judge dismissed the application filed by the petitioners herein stating that the petitioners herein did not file any legal heir certificate or any authenticated proof to show that they are the legal heirs of the deceased Khader Khan. In this context, it is significant to note that even the Respondents in their counter did not dispute the relationship of the petitioners with late Mohd. Khader Khan. The learned District Judge also dismissed the application on the ground of delay. It is pertinent to note that earlier also petitioners herein filed I.A.No.3327 of 2008 in O.P.No.448 of 2004 i.e. prior to separation of present survey numbers from O.P.No.448 of 2004.

11. Admittedly, in the present case, substantial property rights are involved and the fact remains that reference under Section 31 is pending consideration to decide the ownership of the parties to the dispute. Therefore, having regard to the said situation, the learned District Judge ought not to have dismissed the application on the ground of delay also. It is also to be noted that the provisions of Order 1 Rule 10 of CPC are primarily intended to have finality for the litigation. In the considered opinion of this Court, if the petitioners herein are allowed to come on record, there can be finality for the litigation.

12. In *Repaka Bhyravamurthy v. Muppidi Venkataraju* (1 supra), the Larger Bench of this Court, while holding that the provisions of Order 1 Rule 10, are applicable to reference under Section 31 of the Act,

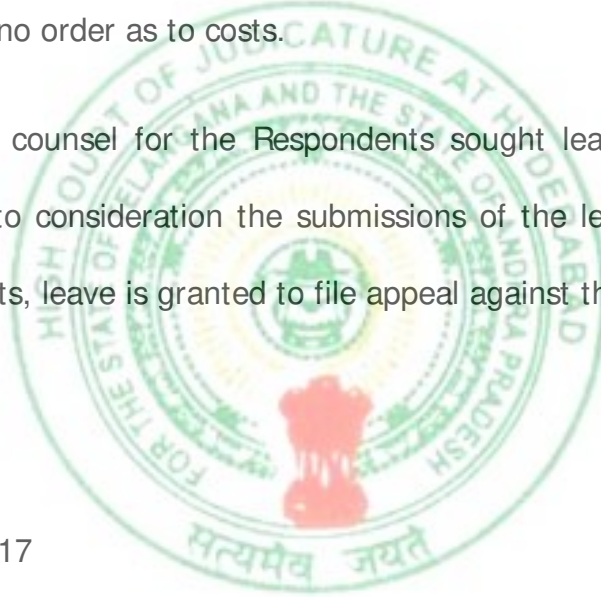
categorically held that substantive right of a party cannot be allowed to be obliterated only because of the procedural provisions. In view of the above reasons, this Court does not find any justification in refusing to permit the petitioners herein to come on record.

13. For the aforesaid reasons, the C.R.P. is allowed. Consequently, I.A.No.2 of 2012 in O.P.No.981 of 2012 on the file of Court of I Additional District Judge, R.R. District at L.B.Nagar, Hyderabad is allowed and the petitioners herein stand impleaded as Claimants 8 to 15 in O.P.No.981 of 2010. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

14. Learned counsel for the Respondents sought leave to file appeal. After taking into consideration the submissions of the learned counsel for the Respondents, leave is granted to file appeal against this order.

Date: 16.11.2017
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A.V.SESHA SAI, J





THE HON'BLE SRI JUSTICE A.V.SESHA SAI



.11.2017

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