

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION Nos. 189 of 2017 and 338 of 2017

COMMON ORDER:

1) C.R.P.No.189 of 2017 is filed, against the order dated 01.12.2016, passed in I.A.No.470 of 2016 in O.S.No.155 of 2016 on the file of the Additional Senior Civil Judge, Madanapalle, wherein an application filed under Order I Rule 10 read with Section 151 of C.P.C. to implead the proposed parties as defendant Nos.14 to 17 was dismissed.

2) C.R.P.No.338 of 2017 is filed, against the order dated 01.12.2016 passed in I.A.No.736 of 2016 in O.S.No.155 of 2016 on the file of the Additional Senior Civil Judge, Madanapalle, wherein an application filed under Order I Rule 10 read with Section 151 of C.P.C. to implead the proposed parties as defendant Nos.18 to 20 was dismissed.

3) Since the issue involved in all the Civil Revision Petitions filed under Article 227 of the Constitution of India are interconnected, they are disposed of by this common order.

4) The petitioners herein filed O.S.No.155 of 2006 seeking partition of the suit schedule properties into eight equal shares and to allot one such share to the plaintiffs. If the defendants failed to do so, the same may be done through the process of law. In the said suit, respondent Nos.1 to 9 were shown as defendants originally. Subsequently, by an order dated 19.09.2014, passed in

I.A.No.9 of 2013 respondent Nos.10 to 13 herein were brought on record as legal representatives of defendant No.1, when the said suit was posted for defendants evidence, the petitioners/ plaintiffs filed the above two petitions seeking impleadment of third parties. The averments in the affidavit filed in support of I.A.No.470 of 2016 would show that the proposed defendant Nos.14 to 17 filed O.S.No.39 of 2012 on the file of the II Additional District Judge, Madanapalle against proposed defendant Nos.18 to 20 and others seeking partition in respect of the very same properties. On coming to know about the same, the petitioners filed I.A.No.718 of 2012 seeking their impleadment in O.S.No.39 of 2012. By an order dated 28.04.2016, the learned II Additional District Judge, Madanapalle allowed the said petition. Since the properties in O.S.No.39 of 2016 and O.S.No.155 of 2016 claimed to be one and the same, the present petitions came to be filed to implead the proposed defendants.

5) A counter came to be filed disputing the averments made in the affidavit filed in support of the petitions. The main ground urged in the counter is that the petitioners herein are trying to delay the proceedings on one pretext or the other. Earlier the petitioners filed I.A.No.302 of 2012 seeking amendment of pleadings which was rejected. Thereafter, they filed I.A.No.389 of 2015 for consolidation of the present suit with O.S.No.46 of 2011 which was also dismissed on 09.06.2015. It is said that if the request of the petitioners is accepted the matter is going to get further delayed since fresh written statement is required to be

filed and additional issues have been framed. Apart from that the proposed defendants will also file applications for recall of witnesses already examined, which caused further delay in the matter. It is urged that if really the petitioners are aware about all the aspects they should have moved the applications at the earliest and not at the belated stage when the suit was posted for further evidence of defendants. It is also said that nearly ten years after filing of the suit, the present applications are filed only with a sole motive of delaying the proceedings.

6) After considering the rival submissions made, the trial Court rejected the request of the petitioners. Challenging the same, the present Civil Revision Petitions are filed.

7) As seen from the record, the plaintiffs filed the suit for partition of sarcar dry land admeasuring Ac.5.31 in Sy.No.442 and Ac.1.81 cents in Sy.No.447 of B.K.Palle, Madanapell Revenue Mandal. During the course of trial, PW.1 was examined on behalf of the plaintiffs and got marked Exs.A1 to A4. On behalf of the defendants, DWs.1 to 6 were examined and Exs.B1 to B9 are marked. The record discloses that at the time when the suit was posted for further evidence of defendants, the present applications came to be filed. The record further discloses that another suit O.S.No.39 of 2012 was filed by the proposed defendants before the II Additional District Judge, Madanapalle for partition, in which the petitioners herein got impleaded vide order dated 28.04.2016. At the fag end of the trial the present

applications came to be filed seeking to implead the parties in O.S.No.39 of 2012. If really the plaintiffs and some of the defendants in O.S.No.39 of 2012 are aggrieved by the suit filed by the petitioners herein, they would have definitely come on record and contest the matter as they are aware about the filing of O.S.No.155 of 2006 and the consequences thereof if they do not get themselves impleaded. In the affidavits filed before the trial Court no reasons are given as to how the plaintiffs and some of the defendants in O.S.No.39 of 2012 are necessary for proper adjudication of the matter. The only plea is that if the parties in O.S.No.39 of 2012 are not impleaded it would lead to wilderness hence the petitioners herein will be forced to hover the Courts in connection with O.S.No.39 of 2012 etc.

8) For the aforesaid reasons, I am of the opinion that no legal and justifiable reasons are given as to why the parties in O.S.No.39 of 2012 are necessary parties. On the otherhand, learned counsel for the respondents submits that suit property in O.S.No.39 of 2012 is different from the suit property in O.S.No.155 of 2006. The schedule in O.S.No.155 of 2016 is shown as Sarkar Dry admeasuring Ac.5.31 cents in Sy.No.442 and Ac.1.81 cents in Syu.No.447 of B.K.Palle Village, but in O.S.No.39 of 2012 the property was shown as Ac.10.62 cents in Sy.No.442/ 1 and Ac.3.62 cents in Sy.No.447/ 2.

9) When the said discrepancy pointed out, the learned counsel for the petitioners would submit that it would be just and proper

if both the suits are clubbed together for an effective and proper adjudication of the dispute. But if the request of the petitioners with regard to impleading is to be accepted, there is every likelihood of matter get delayed further since an opportunity has to be given to the proposed defendants to file written statement, then issues have to be framed, the witnesses already examined have to be recalled for further cross examination on behalf of the proposed defendants and thereafter an opportunity should be given to the proposed defendants to lead evidence. If the plea of the petitioners that the property in both the suits is one and the same is correct, it is always open to them to move the appropriate Court seeking transfer of both the suits to one Court.

10) For the aforesaid reasons, I see no merits in the revision petitions. Accordingly, both the Civil Revision petitions are dismissed giving liberty referred to above. There shall be no order as to costs. Miscellaneous Petitions pending, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

15.06.2017
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