

**HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

**CIVIL REVISION PETITION No.3356 of 2017**

**ORDER:**

This Civil Revision Petitions is filed by the petitioner under Article 227 of Constitution of India, challenging the order, dated 28-06-2017 passed in I.A.No.198 of 2017 in O.S.No.406 of 2016 by the IV Senior Civil Judge, City Civil Court, Hyderabad, dismissing the application filed under Order 1 Rule 10 of Code of Civil Procedure.

The respondent filed the suit for partition of the schedule property after death of her husband Sri.M.S. Suresh Kumar against Ms.M. Shanthi Sunitha Kumari, Sri T.V. Prasad and Sri C. Mallikarjun, who are defendants 1 to 3, and the property covered by gift deed is one of the items in the property.

It is the case of the petitioner that she was the absolute owner of the property and she executed a gift deed, dated 17-08-2004 in favour of husband of the 1<sup>st</sup> respondent during his life time with absolute rights. But she contended that it was not acted upon and her son also gave a declaration that she executed a gift deed out of love and affection and she is entitled to live in the schedule property during her life time having right to enjoy the property. Therefore, taking advantage of the declaration she filed a petition to implead her under Order 1 Rule 10 (2) of Code of Civil Procedure.

No doubt, though the respondent denied her right to implead herself as a party by filing counter as she parted with the property by executing a registered gift deed to her son out of love and affection, therefore, she is neither proper and necessary party to the suit and prayed to dismiss the petition.

Upon hearing arguments of both counsel the trial Court passed the order, which is assailed in this revision.

Aggrieved by the order, the present revision is filed on various grounds mainly on the ground that she is still continuing in possession and enjoyment of the property in view of the declaration given by her son. The donee gave declaration and thereby she is a proper and necessary party to the suit for partition, who is still continuing in possession and enjoyment of the same. But the trial Court did not accept her contention and passed the impugned order erroneously and in case she is not impleaded she will be put to serious loss and thereby requested this Court to allow the revision petition setting aside the order in I.A.No.198 of 2017 in O.S.No.406 of 2016.

During hearing, at the stage of admission, learned counsel for the petitioner Sri K. Buchi Babu contended that in view of the declaration executed by her son she is entitled to continue in possession and enjoyment of the property and she is a proper and necessary party to the suit filed for partition since the dispute cannot be decided effectively in her

absence, as she is proper and necessary party to the suit and requested to permit her to come on record as defendant.

Admittedly, the suit was filed for partition and the son of the proposed party became absolute owner of the property by virtue of the gift deed executed by the proposed party in favour of her son on 17-08-2004 bearing No.3016 of 2014 and thereby he became absolute owner of the property. But now after filing the suit she contended that it was not acted upon and still she is continuing in possession and enjoyment of the property and the basis for her claim is declaration given by her son affirming that she is continuing in possession and enjoyment of the property and she is having right to use property as usual and right to collect rent in respect of the said property during her life time. But when the petitioner executed gift deed, which is an absolute transfer she ceased to be the owner of the property and her son became the owner of the property but the declaration whatever executed during pendency of the suit or prior to it will not change the possession of the property and mere continuing in possession of the property as asserted in the declaration is inconsequential. Therefore, based on such declaration she cannot come on record as a party to the suit.

Order 1 Rule 10 (2) of Code of Civil Procedure deals with the power of the Court to strike out or add parties, it reads as follows:

*“The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name, of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”*

Therefore, discretion is conferred on the Court even without any application the Court if finds any 3<sup>rd</sup> party necessary for complete adjudication of the dispute, the Court may implead or strike out any party in the array of the suit.

In the present case, to exercise such power the proposed party must have interest in the property and unless he/she shows that he/she has got interest, *prima facie*, the proposed party cannot be allowed to come on record and therefore, the mere declaration of her son who is no more, itself is not a ground to claim that she is a proper and necessary party to the suit for partition. Even if she is in possession and enjoyment of the property she cannot be impleaded as party to the present suit and it is for the plaintiffs or defendants to whom the property was allotted as their share can take appropriate steps for taking possession.

The Apex Court in **Razia Begum v. Sahebzadi Anwar Begum & others**<sup>1</sup> discussed the scope of Order I Rule 10(2) of C.P.C and held that the interest which the proposed party shall have in the suit to enable him to be impleaded therein, should be direct interest and not a commercial interest.

Similarly, in re, Ibrahim Haji, Ramaswami J. held as follows:--

*"Order 1, Rule 10(2), Civil P. C., confers wide discretion to the Court to meet every case of defect of parties but is subject to two limitations, viz., (1) that the Court has no power to join a person as a party if he could not have been originally impleaded under O. 1, R. 1, or R. 3, Civil P.C. and (2) that the presence of the person added must be necessary to effectually and completely adjudicate upon and settle all points involved in the suit if persons who are sought to be impleaded have no subsisting right over the **properties** and they are sought to be impleaded only for the purpose of getting their evidence, and it would **not be** proper to make them parties to the suit and that the petitioner apprehension that they would be driven to the necessity of filing a separate suit against these persons is not a sufficient justification to compel the plaintiff to implead them as parties to the suit."*

Later, the Madras High Court in Firm of **Mahadeva Rice and Oil Mills v. Chennimalai Gounder**<sup>2</sup> laid down the following principle:

*"I am of the opinion that the following tests may be formulated usefully as a guidance in the case of adding of parties under O. 1, R. 10, Civil P. C.:*

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<sup>1</sup> 1958 AIR 886

<sup>2</sup> AIR 1968 Mad 287

*(1) If, for the adjudication of the "real controversy" between the parties on record, the presence of a third party is necessary, then he can be impleaded.*

*(2) It is imperative to note that by such impleading of the proposed party, all controversies arising in the suit and all issues arising thereunder may be finally determined and set at rest, thereby avoiding multiplicity of suits over a subject-matter which could still have been decided in the pending suit itself;*

*(3) The proposed party has a defined, subsisting, direct and substantive interests in the litigation, which interest is either legal or equitable and which right is cognisable in law;*

*(4) Meticulous care should be taken to avoid the adding of a party if it is intended merely as a ruse to ventilate certain other grievances of one or the other of the parties on record which is neither necessary or expedient to be considered by the Court in the pending litigation; and*

*(5) It should always be remembered that considerable prejudice would be caused to the opposite party when irrelevant matters are allowed to be considered by Courts by adding a new party whose interest has no nexus to the subject-matter of the suit."*

In view of the above, unless the person who proposed to come on record has got direct interest in the property he/she cannot come on record as property party. In the present case, except contending that she is in possession of the property there is nothing and she herself admitted that she executed a gift deed, which is an absolute transfer, thereby she seized to be the owner and whether the gift deed is acted upon or not is not a question to be decided at this stage, therefore, I find no

ground to set aside the order passed by the trial Court while holding to conclude that she is a proper and necessary party. Thereby, the order passed by the trial Court is very legal and there are no infirmities warranting interference of this Court while exercising the power under Article 227 of Constitution of India and consequently the Civil Revision Petition is liable to be dismissed.

Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

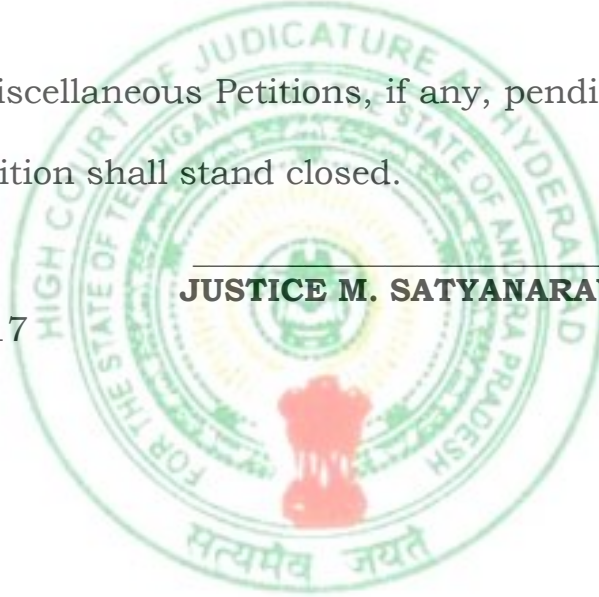
The Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

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**JUSTICE M. SATYANARAYANA MURTHY**

July 14, 2017

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