

HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.3201 of 2015

ORDER:

Heard learned counsel for the revision petitioner No.2 since revision petitioner No.1 died and revision petitioner No.2 shown as his legal representative and also learned counsel for respondent No.10. Respondent Nos.2 to 9 endorsed as not necessary parties to the revision and respondent No.1 though served, failed to attend and perused the grounds urged in the revision and the impugned order of the lower Court.

The lower Court dismissed the I.A.No.402 of 2014 by order dated 30.04.2015 in the pending suit for specific performance in O.S.No.708 of 2012. It was the application filed under Order I Rule 10 CPC to implead the proposed defendant No.10, who is the respondent No.10 by name Smt. BS Reddy. It is with claim that though he filed the suit in 2012 based on the contract for sale dated 12.11.2009, the proposed 10th defendant started claiming that she obtained GPA-cum-sale agreement No.4297/2010 from the 1st defendant is choosing to interfere and she is a necessary party to the suit. Thereby, she has to be impleaded and the sale agreement-cum-GPA to be declared as void. In fact what is there in the affidavit not even there in the petition to which the affidavit is supporting as the petition prayer reads that for the reasons stated in the accompanying affidavit it is prayed that the Hon'ble Court may be pleased to implead the proposed party as defendant No.10 in main suit and pass any appropriate orders as the Hon'ble Court may deem fit and proper in the interest of justice and equity. In fact Rule 28 of Civil Rules of Practice mandates

consequential amendment that to be shown in the very petition if not at least by mentioning in the petition as consequential amended petition is enclosed by filing separate petition without which the very petition for amendment including to implead a party that too when in the affidavit says that subsequent sale agreement-cum-GPA not binding or void as the case may be, if at all to seek for joining of the so called 10th defendant also along with other defendants in execution of sale deed for granting decree of specific performance in favour of the plaintiff. Once that consequent amendment is not there with requirement of Court fee, if any, the trial Court should not have been adjudicated the matter for liable at the threshold in rejection.

Having regard to the above, the order of the lower Court is set aside though the rejection is not a bar to the fresh petition, instead of so driving, the petition is remanded to the lower Court to permit the petitioner to seek for appropriate amendment to the petition and to decide afresh on own merits.

Accordingly and in the result, the Civil Revision Petition is allowed.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 12.12.2017
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