

THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

C. R. P. Nos. 4235, 4238 and 4270 of 2011

COMMON ORDER :

In all the three revisions the petitioner by name Suryadevara Amit Nagendra, is a third party to the three suits viz; O.S.No.388 of 97, O.S.No.104 of 98 and O.S.No.368 of 1995 respectively. He filed implead petitions in the three suits to come on record in I.A.No.649, 648 and 650 of 2009 respectively under Order I Rule 10 C.P.C.

2. Coming to the suit in O.S.No.388 of 1997(CRP No.4235 of 2011), it was filed by one S.Ramachandra Rao-Revision 1st respondent (father of the petitioner) rep. by GPA holder-S.Hemalatha(mother of the petitioner), for partition of plaint schedule properties therein. Among other respondents 2 to 6 (D.2 to D.6) to the revision viz; S.Naga Bhushanarao and S.Ravindranath are the brothers of Ramachandra Rao and sons of S.Satyavathi Devi. V. Koteswara Rao and S.Suresh Babu are the other defendants to the suit supra. Satyavathi Devi died pending suit left behind her the three sons and two daughters by names Atluri Sowbhagyavathi Devi and Atluri Venkata Shiva Lakshmi Kumari.

3. Coming to the suit O.S.No.104 of 1998(CRP No.4238 of 2011), it was filed by said S.Ramachandra Rao-1st respondent through G.P.A.Smt. Hemalatha against S.Nagabhushana Rao supra for rendition of accounts.

4. Coming to the suit O.S.No.368 of 1995(CRP No.4270 of 2011), it was filed by S.Nagabhushana Rao-revision 2nd respondent against the other respondents to the revision for partition of plaint schedule properties.

5. There was during pendency of the suits, a compromise affected covered by compromise decree, dt. 29.09.1995 in O.S.No.368 of 1995, based on compromise memo, dt. 17.09.1995.

6. In the suit O.S.No.368 of 1995 covered by the compromise decree, dt. 29.09.1995, there is I.A.No.634 of 1997 filed to set aside the compromise decree in O.S.No.368 of 1995 by said S.Ramachandra Rao representing by his wife Smt. Hemalatha.

7. It is during pendency of the same, the son of said S.Ramachandra Rao and Hemalatha by name S.A.Nagendra-the petitioner herein, wanted to come on record by filing I.A.No.650 of 2009 in that pending I.A.NO.634 of 1997 of the compromise decree in O.S.No.368 of 1995 that was sought for setting aside with the averments in the affidavit petition that the petitioner got right over the properties, there is likelihood of danger to the properties as his father S.Ramachandra Rao is not looking after welfare of the family, and his mother has not taken adequate steps to protect the properties and thereby he is to be impleaded.

8. S.Ngabhushana Rao filed counter in opposing the implead petition. The counter contest is that the petitioner(S.A.Nagendra) wants to dispute the acts of his father who is senior I.A.S. Officer representing through his mother as GPA holder, law graduate and there are no merits in the implead petition. The date of birth of the petitioner shows 01.09.1988 and his elder sister shown born in 1985 and she is also a necessary party if at all and she was never chosen to question the proceedings and there are no valid grounds to implead him as a co-respondent to the I.A.No.634 of 1997.

9. It is after hearing both sides, the learned III Addl. Senior Civil Judge, Vijayawada on 05.09.2011 dismissed I.A.No.650 of 2009 with the observations that the suit O.S.No.368 of 95 was already decreed by compromise and only I.A.No.634 of 97 is pending and the allegations made in the implead petition are against the father and mother as if they are not properly protecting the rights of the petitioner for which he is chosen to implead at this stage, that too, when O.S.No.368 of 1995 not even re-opened and in such circumstances he being a third party chosen to implead as a party is not just and even the implead petition I.A.No.650 of 2009, it is not even sought for impleadment in I.A.No.634 of 1997 and even for that the petitioner being a third party, has to show fraud and collusion and vague allegations are not suffice that too against his parents without foundation. There is also another suit O.S.No.388 of 1997 filed for partition which is pending and thereby the petitioner, being a third party, is no way necessary party even to I.A.No.634 of 1997.

10. It is impugning the same, the unsuccessful petitioner/third party in I.A.Nos.649, 648 and 650 of 2009 maintained the revisions with the common contentions in all the revisions that there accrued a right to the petitioner in the joint family properties and he is entitled to protect his interest and without considering the specific contention of the petitioner that the 1st respondent is not looking after his welfare and thereby he filed the petition to implead, the lower Court dismissed the petition instead of allowing for he being a proper and necessary party and that too the order of the lower Court on technicalities is unsustainable and it is his case that the compromise decree in O.S.No.368 of 1995 obtained by fraud and it effects his right, hence to set aside the dismissal orders.

11. During pendency of the revision, the Satyavathi Devi-R.4(mother of S.Ramachandra Rao, S.Nagabhushanarao and S.Ravindranath-R.1 to R.3 respectively) died and CRPMP No.5031 of 2016 filed to add proposed respondents 6 and 7 by names Atluri Sowbhagyavathi Devi and Atluri Venkata Shiva Lakshmi Kumari, in saying besides S.Ramachandra Rao, S.Nagabhushana Rao and Ravindranath, being the sons of 4th respondent late Satyavathi Devi supra, there are two more daughters to her i.e. the proposed R.6 and R.7 supra and they are to be impleaded.

12. Notice is served on R.7 and notice by substituted service ordered for R.6 through paper publication in Andhra Prabha Telugu Daily. While so, one Nagamani W/o Nagabhushana Rao supra claiming as GPA Holder of Sowbhagyavathi Devi-proposed R.6 supra claiming that Satyavathi Devi executed a will dt.01.03.2004 registered document No.2 of 2004 of SRO, Kanchikacherla bequeathed her ancestral property covered by Ac.0.28cents with constructions at Kankipadu in favour of Sowbhagyavathi Devi and AVSL Kumari each Ac.0.14cents and the will came into operation and thereby she has to be brought on record.

13. The petition in CRPMP No.7111 of 2015 is pending along with L.R. Petition CRPMP No.5031 of 2016 in CRP No.4270.

14. In the main revision CRP No.4270 of 2011, R.2 S.Nagabhushan Rao representing through advocate Sri V.S.R.Anjaneyulu and the proposed respondents 6 and 7 representing through advocate Sri T.Ravi Kumar. The other respondents 1,3 and 5 even served failed to attend and R.4 died and L.R. applications pending as referred supra.

15. The learned counsel for R.3 and the proposed respondents 6 and 7 in both the petitions supra drawn attention of the Court to the expression of the Apex Court in *Jaladi Suguna(d) through L.Rs.Vs. Satya Sai Central Trust*¹ where it is held that when impleadment of legal representatives of respondents on right to sue survives claimed by husband intestate succession, whereas her nieces and nephews as testamentary legatees sought for impleadment in rival, the disposal of the first appeal by the High Court on merits without determining among these legal heirs of the deceased respondents/ plaintiffs is unsustainable for the High Court could not have postponed determination of legal heirs, instead of postponing to decide the appeal on merits by referring to the scope of Order XXII Rules 4 and 5 read with Rule 11 CPC. Here it is not the first appeal to apply the proposition therein. It is only a third party impleadment petition dismissed when revision maintained against it and in which the deceased 4th respondent is one of the co-defendant to the suit and co-respondent to the impleadment petition vis-à-vis the revision.

16. In fact, the estate of the deceased is being represented by the three sons on record with no need of filing legal heir application. Apart from it, even under the claim of testamentary succession by the proposed two daughters of the deceased in claiming exclusion of the sons, they can be brought on record for ultimately to decide by the trial Court in the pending application in I.A.No.634 of 1997 where the compromise decree was sought for setting aside to decide on merits, and before that to decide the legal heir application as to truth and genuineness of the will to be proved for giving of final decision. Such a necessity does not arise herein the revision for not a final adjudication,

¹ (2008) 8 SCC 521

for the revision is against the dismissal of the third party impleadment petition.

17. Having regard to the above, both the applications in CRPMP No.7111 of 2016 and CRPMP No.5031 of 2016 can be allowed in ordering two daughters also to be brought on record with a direction to the trial Court before deciding I.A.No.634 of 1997 to decide the claim in CRPMP No.7111 of 2016 based on will on its proof of the testament and entitlement of the testamentary succession otherwise they are also be added as parties under intestate succession along with their three brothers being the two daughters of the deceased among the three sons and two daughters.

18. With these observations and directions CRPMP No.7111 of 2016 and 5031 of 2016 are allowed to take up on merits the CRP No.4270 of 2011 against the correctness of the dismissal of the third party implead petition in I.A.No.650 of 2009 dt.05.09.2011.

19. With this background, coming back to CRP No.4235 and 4238 of 2011, those two suits are shown pending and not disposed of much less by compromise or on merits so far where against dismissal of the similar 3rd party implead petitions, these revisions also filed. . Thus all the three revision petitions can be taken up together.

20. The facts no way require repetition in deciding these three revisions. It is to consider whether the petitioner is either necessary or at least a proper party to the respective lis.

21. Undisputedly, he did not come on record earlier and not even his case that he has no knowledge about suit proceedings much less the compromise and subsequent stages all through. His father is an IAS

Officer and his mother is a law graduate not in dispute. They are not illiterates. There is nothing to show that they are acting detrimental to his interest though he has also got by birth if at all these are joint family coparcenary properties and any acquisition out of the nucleus and blending with the nucleus to claim share therein out of the undivided interest of his father by birth including from filing of a suit, severance in status in between his father and his brothers. It is not even a case to implead him in any final decree petition to separate his share out of the estate of his father to work out rather driving for a separate suit. Thus he is not a necessary party to the suit as necessary party is one without whose presence, the suit cannot be disposed of, whereas, a proper party is one without whose presence a suit can be disposed of, though not effectively and in case of necessary party any non-joinder of necessary party, the suit is liable to be dismissed. Here it is not that case. Thus it is only to consider whether the petitioner is a proper party in all the three matters. In this regard, coming to the legal position, the 5JB expression of the Apex Court in *Smt. Saila Bala Dassi Vs. Nirmala Sundari Dassi*² though that expression covers not only Order I Rule 10 of CPC but also Section 146, Order XXII Rule 10 and Section 52 of the Transfer of Property Act, also held under Order I Rule 10 CPC, the Court can if necessary, *suo-moto* implead or transpose any parties. Further in *Razia Begum Vs. Sahebzadi Anwar Begum*³ it is held the Court has got a discretion to implead a proper party, whereas, a party got a duty to implead a necessary party.

22. In *Ramesh Hiranand Kundanmal L. Vs. Municipal Corporation of Greater Bombay*⁴ it is no doubt held that the Court has a discretion to

² AIR (1998) SC 394

³ AIR 1958 SC 886

⁴ (1992) SCC 2 524

direct a plaintiff, though the plaintiff is *dominus litis*, to implead a person as a necessary party and mere fact that a fresh litigation can be avoided though by itself not a ground to invoke the power, if the person is either necessary or a proper party, the Court can implead to avoid multiplicity of proceedings.

23. It is also observed that merely because he is a proper party that itself is not a ground for automatic impleadment as held in *Ramji Dayawala & Sons Private Limited Vs. Invest Import*⁵, unless the Court comes to the conclusion that such impleadment is necessary of the proper party to avoid multiplicity of proceedings or for an effective adjudication of the lis. In *Amit Kumar Vs. Farida*⁶, the Apex Court observed that a transferee *pendenti liti* though bound by Section 52 of the T.P.Act, by virtue of the assignment pending lis under Order XXII Rule 10 to the interest acquired in the pending litigation from one of the defendants to the lis from the contention of the party from whom he acquired interest may not properly defend the suit or may collude with others can be impleaded by the Court under Order I Rule 10 CPC as co-defendant within its discretion though the plaintiff is *dominus litis* and opposes the same. In *Mumbai international Airport Pvt.Ltd. Vs. Regency Convention Centre and Hotels Pvt.Ltd.*⁷, the Apex Court observed at para-8, referring to several earlier expressions on the scope of law that Order I Rule 10(2) CPC discretionary power of Court to add any party is an exception to the general rule in regard to impleadment of parties that plaintiff may choose defendants and he cannot be compelled to sue a person against whom he seeks no relief. However, the discretion is limited to persons found to be either necessary or

⁵ AIR 1981 SC 2085

⁶ AIR 2005 SC 2209

⁷ AIR 2010 SC 3109 = AIR 7 SCC 417

proper parties to the lis to exercise judiciously according to reason and merely likelihood of a third party to secure a right or interest in suit property in case of dismissal of suit for specific performance does not make him either necessary or proper party and Court cannot implead and mere expectation as to likelihood of conveyance of title also does not create any interest in property thereby neither necessary nor proper party to the suit. In the 3JB expression of the Apex Court earlier to it, in *Kasturi Vs. Uyyam Perumal*⁸ observed that a third party cannot be impleaded in a suit for specific performance if he has no semblance of title in the property in dispute as it may unnecessarily protract or obstruct the suit proceedings and widens the scope of the lis.

24. Thus from the above propositions coming to the facts undisputedly so far as the pending suits concerned for all the three suits filed by the father of the petitioner herein as referred supra, two of the suits since pending where he is claiming right though in the property of his father, he is even not a necessary party as concluded supra, is a proper party and so far as the compromise decree sought for setting aside by his father through his mother as GPA concerned, though he is not a necessary party and whatever the share his father got by virtue of compromise in which he can claim unless to widen the lis from setting aside the compromise decree sought by his father through his mother in I.A.No.634 of 1997, there he is neither necessary party nor proper party, as held by the trial Court, should have been considered the other two applications for impleadment rather than dismissal. It is made clear that the petitioner by virtue of any impleadment in the pending suits cannot acquire new rights but for the existing and so far as suit decreed by compromise, any of his impleadment as proper party arises only after

⁸ (2005) 6 SCC 733

disposal of I.A.No.634 of 1997 if at all same is allowed. Otherwise, his impleadment can be in a final decree petition if filed.

25. Accordingly and in the result:-

a) The two revisions covered by C.R.P.Nos. 4235 and 4238 of 2011 are allowed and the petitioner-S.A.Nagendra is impleaded as co-defendant in the two pending suits before the trial Court in O.S.No.388 of 1997 and O.S.No.104 of 1998.

b) So far as C.R.P.No.4270 of 2011 concerned, the same is dismissed which is without prejudice to seek for impleadment in future if I.A.No.634 of 1997 is allowed in the suit as co-defendant and otherwise if any final decree petition filed in the compromise decree in O.S.No.368 of 1995 as co-respondent to work out his share if any.

c) Consequently, miscellaneous petitions, if any, pending in these revisions, shall stand closed.

Date:13.12.2017
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Dr. B.SIVA SANKARA RAO J,

