

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.2235 OF 2017

O R D E R

This civil revision petition under Article 227 of the Constitution arises out of the order dated 14.02.2017 of the learned I Additional Junior Civil Judge, Ranga Reddy District at L.B.Nagar, in I.A.No.826 of 2016 in O.S.No.245 of 2014. The said I.A. was filed by the petitioner herein under Order 1 Rule 10 CPC seeking to be impleaded as defendant No.8 in the suit. By the order under revision, the trial Court dismissed his plea. Aggrieved thereby, he is before this Court.

O.S.No.245 of 2014 was filed by the first respondent herein to declare the sale deed dated 21.03.2005 in respect of the suit schedule 'A' property as null and void and not binding on him and to consequently declare the two gift deeds dated 06.04.2005 in respect of the suit schedule 'B' to 'F' properties as null and void and not binding on him. He also sought a perpetual injunction restraining the defendants from alienating/transferring and changing the nature of the suit schedule 'properties. In the plaint, the plaintiff specifically averred that he along with his four brothers – A.Damodar, A.Prabhakar, A.Narender and A.Surender, were the absolute owners of the suit schedule A property, and disputed the claim of his sisters, basing on their mother's sale deed dated 21.03.2005 and the consequential gift deeds executed in their favour. A declaration was sought by him in relation to these documents.

Significantly, the plaintiff made only one brother, A.Prabhakar, a party to the suit, as defendant No.7. Surprisingly, he stated in para 7 of the plaint that he had added his other brothers, A.Damodar, A.Prabhakar, A.Narender and A.Surender as defendants 9 to 12 in

the suit, but this was not so. Only A.Prabhakar finds mention as defendant No.7. The petitioner herein, A.Damodar, was one of the other brothers of the plaintiff. He filed the subject I.A. seeking to be impleaded as defendant No.8 in the suit claiming that he was a proper and necessary party thereto. This claim was not contested by the plaintiff, but the sixth defendant in the suit, being the vendee of the suit schedule 'A' property, contested his claim. He stated in his counter that the petitioner was not a necessary party to the suit.

The trial Court merely replicated the pleadings of the petitioner and the sixth defendant and opined that as the plaintiff had filed the suit on behalf of his other brothers and as the petitioner was supporting his version, he was not a necessary party. According to the trial Court, it is for the plaintiff to identify the parties against whom he has any grievance and implead them as defendants in the suit for seeking necessary relief and he cannot be compelled to face litigation with persons against whom he has no grievance. As the petitioner was the brother of the plaintiff, who had no grievance with him, the trial Court concluded that he was not entitled to be impleaded as a defendant. Surprisingly, the trial Court opined that it is only a person who opposes the suit who could file an application to get himself impleaded as the defendant and a party who supports the prayer in the suit could get himself impleaded only as a plaintiff and not as a defendant. On this ground, the trial Court disallowed his plea to be made a party to the suit and dismissed his I.A.

Heard Sri Vedula Srinivas, learned counsel for the petitioner, and Dr.Venkat Reddy Donthi Reddy, learned counsel for the sixth defendant.

The trial Court seems to have completely lost sight of the fact that one of the brothers of the plaintiff was already arrayed as a defendant in the suit. The plaint averments spoke to the effect that all the brothers were shown as defendants but that was not so. As the sixth defendant stands at the risk of having the sale in his favour being set aside, if the prayer of the plaintiff was accepted, it is in his interest to see that the adjudication is comprehensive and complete so as to obviate further litigation. In the event only some of the brothers figure as parties, the possibility of the other brothers initiating litigation afresh cannot be ruled out. All the more so, when one of such brothers seeks to be impleaded and he is not permitted to come on record. In effect, the judgment rendered in the suit cannot thereafter be held to be binding upon him. These aspects of the matter seem to have been completely overlooked by the trial Court. Further, the bald assumption of the trial Court that a party supporting the plaintiff cannot be arrayed as a defendant has no basis in law. All the more so, when one of the brothers supporting the plaintiff in the present case was shown as a defendant in the suit.

Be it viewed from any angle, the approach of the trial Court in dealing with the petitioner's application under Order 1 Rule 10 CPC cannot be accepted. It would not only be in the interest of the petitioner but also the sixth defendant, if the petitioner is made a party to the suit. The order dated 14.02.2017 passed in I.A.No.826 of 2016 in O.S.No.245 of 2014 is accordingly set aside and the said I.A. is ordered impleading the petitioner herein as defendant No.8 in the suit.

The civil revision petition is allowed. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

18th AUGUST, 2017

PGS

