

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION No.2816 OF 2011

Dated:09.11.2017

Between:

R. Athmaram, S/o. Late R. Nagappa,
Aged about 56 Years, Occ: Business,
R/o. Nagari – Pallipattu Road, Nagari
Town, Post and Mandal Chittoor District .. Petitioner

And

R. Soorya Prasad, S/o. Late Nagappa,
Aged about 44 years and others .. Respondents



The Court made the following:

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ORDER:

Heard.

2. Petitioner/plaintiff instituted O.S.No.28 of 2007 pending on the file of Senior Civil Judge, Puttur, for partition of plaint schedule property against defendants 1 to 3. Therein, petitioner filed I.A.No.271 of 2010 under Order I Rule 10 C.P.C. to implead respondents 4 to 7 as parties to the suit. By order dated 20.06.2011, the trial Court dismissed the said application. Aggrieved thereby, petitioner preferred this Civil Revision Petition.

3. The averments made in the affidavit filed in support of the interlocutory application are to the effect that the proposed respondent No.7 sought to interfere with the possession and enjoyment of the subject property by asking the 1st respondent to vacate the second item of the suit schedule property by relying on the sale deed claimed to have been executed in his favour by respondents 4 to 6. Stating that such sale during the pendency of partition suit is illegal, the petitioner sought to implead respondents 4 to 7 as defendants to the suit. The affidavit would further disclose that one Leelavathy @ Neelavathy filed O.S.No.20 of 2006 before the very same Court of the learned Senior Civil Judge, Puttur, against the 1st defendant claiming her right to the second item of the suit schedule property and the said suit is pending.

4. As briefly noted above, it is not the case of the petitioner that the family members, who are arrayed as defendants 1 to 3, have

sold the property to third parties during the pendency of the suit. It appears that respondents 4 to 6 independently claimed a part of the second item of the suit schedule property as belonging to them and sold it to the 7th respondent.

5. Having regard to the above facts, the trial Court held that the sale transaction stated to have been taken place between respondents 4 to 6 and 7 is independent with the issue in the suit and therefore in a partition suit among the family members, outsiders claiming title to the property cannot be roped in as defendants. The trial Court having held that as no relief was sought against the proposed defendants, it rejected the implead application.

6. Learned counsel for the petitioner submits that as the very same property, which is now under dispute in a suit for partition among the family members, is claimed by the third parties and to have an effective resolution of the dispute and to avoid multiplicity of litigation, the petitioner intends to array them as defendants. According to the learned counsel, in the event petitioner succeeds in the suit and if a decree of partition is granted, it would be difficult for the petitioner for enforcement of the said decree in the absence of proposed respondents 4 to 7. In support of his contention that the trial Court erred in dismissing the application, learned counsel placed reliance on three decisions.

7. I have carefully considered the decisions relied upon by the learned counsel for the petitioner and the order under revision.

8. In ***Dhanalakshmi and others v. P. Mohan and others***¹ the suit was filed for partition and the proposed respondents claimed to have purchased the property from one of the family members in the undivided share of the suit property. The Supreme Court was of the opinion that the appellants therein, having purchased the property from the other co-sharers, are entitled to come on record in order to work out equity in their favour in the final decree proceedings. Therefore, the Supreme Court held that they are necessary and proper parties to the suit and accordingly, issued direction for impleadment of the appellants as defendants 7 to 9 in the suit.

9. As noted above, in the instant case, it is not the case of the petitioner that the proposed respondents have purchased the property from the family members. They have independently set up a claim to the ownership of part of the suit schedule property. Hence, the above decision is of no avail to the petitioner.

10. In ***Kamuben and others v. Ambaben and others***², the suit was filed for partition and property in dispute was sold to third parties during the pendency of the litigation by family members. The purchasers sought to come on record as defendants to contest the claim. The Gujarat High Court observed that the purchasers, who sought to implead as defendants, have entered into the shoes of the original defendants having purchased the property for valuable sale consideration. This decision also does not come to the rescue of the petitioner.

¹ (2007) 10 SCC 719

² 2001 AIHC 4054

11. In ***Lekkala China Masthan Naidu and others v. Meda Sarvani and another***³, the suit was filed for specific performance of agreement of sale and implead party contested the claim. It was a case of implead party that the property, which was the subject matter of the suit, actually purchased by way of a registered sale deed and the parties to the suit are no way concerned with the property and, in fact, the plaintiffs to the suit earlier instituted another suit seeking permanent injunction and without disclosing those facts, the subsequent suit was instituted. Having regard to these facts, this Court observed that the implead parties should be given opportunity of being heard. This decision also does not come to the aid of the petitioner in the peculiar facts of the above case.

12. Having regard to the facts as noted above, I do not see any error committed by the trial Court warranting interference by this Court. The Civil Revision Petition is liable to be dismissed. The Civil Revision Petition is accordingly dismissed. There shall be no order as to costs.

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

P. NAVEEN RAO, J

Date:09.11.2017

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³ 2010 (3) ALT 109