

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.5063 of 2016

ORDER:

The present Civil Revision Petition is filed assailing the order dated 18.07.2016 passed in I.A.No.901 of 2015 in O.S.No.208 of 2007 on the file of the Additional Senior Civil Judge, Chittoor, wherein an application filed under Order I Rule 10 of C.P.C. to implead the proposed party as defendant No.2 was allowed.

2. The facts in issue are as under:

The petitioners-plaintiffs herein filed O.S.No.208 of 2007 against the second respondent seeking declaration of right, title and possession of the schedule property and direct him to vacate and deliver vacant possession of the same, if necessary through process of Court and also direct the second respondent to pay a sum of Rs.72,000/- towards damages for use and occupation for the last three years and to pay Rs.2,000/- per month being damages from the date of suit till the date of delivery of possession. The first respondent filed I.A.No.901 of 2015 seeking his impleadment as defendant No.2 in the above suit. It is stated in the affidavit that one Gangama Naidu and Munaswamy Naidu are brothers and sons of Pedda Gangama Naidu and they are members of a joint family. Respondents herein are sons of Munaswamy Naidu. Late Gangama Naidu who had two wives namely Smt. Ammannamma and smt. Narasamma begot three children through his first wife namely T.Veerabrahma Naidu, husband of first petitioner herein, Smt. Parvathamma and Smt. Chinamma, who were residing as joint

family members. The said T.Veerabrahma Naidu died leaving behind the petitioners as his legal heirs. During his life time T.Veerabrahma Naidu used to manage the joint family properties as the first respondent is rustic village person and doing agriculture and second respondent is an employee residing in Chittoor. When there is a dispute with regard to partition of the joint family properties, the second respondent herein filed O.S.No.54 of 2002, subsequently the same was withdrawn by colluding with the plaintiffs. Since the second respondent has not taken any legal steps for partition of the properties, the first respondent filed O.S.No.270 of 2011 against the petitioners and second respondent. When the said suit is pending, the first respondent came to know that the plaintiffs and second respondent colluded with each other and got filed suits against each other to create collusive decree without impleading him as party. On verification it is revealed that the petitioners herein filed O.S.No.208 of 2007 against the second respondent seeking declaration of right and title without impleading him as party. Hence, he filed the above petition seeking his impleadment in O.S.No.208 of 2007.

3. A counter came to be filed by the petitioners herein stating that the first respondent is fully aware about the suit filed by her and others against the second respondent in the year 2007 and they are sailing together. In the counter it is also stated about the partition suit filed by second respondent, which was later withdrawn and also the suit filed by the first respondent, for partition. The first respondent herein is neither a necessary party nor proper party to the suit proceedings and pray to dismiss the same.

4. After considering the rival submissions, the learned trial Judge allowed the application. Challenging the same the present revision is filed.

5. Learned counsel for the petitioners mainly submits that since the proposed defendant is aware about the proceedings, no reasons are forthcoming as to why he kept quiet for such a long time. According to him, when the suit is of the year 2007, respondent/proposed defendant, who has also filed similar suits against the petitioners herein before the same Court, ought to have been more vigilant in filing the present application. He submits that though Order I Rule 10(2) CPC provides that Court may at any stage of the proceedings order impleadment of any person, but such power should be exercised with great caution. It is his case that when the proposed defendant is not directly interested in the issue between the plaintiffs and the proposed defendant, he cannot be added as a party at the fag end of the proceedings.

6. The same is strongly opposed by the learned counsel for the respondent-proposed defendant, contending that since the proposed defendant is related to defendant No.1, no prejudice would be caused to the petitioners-plaintiffs, since other suits between the same parties relating to the very same property are also pending before the said Court. It is his case that it would be just and proper if all the suits are directed to be tried together in order to avoid conflicting judgments over the property.

7. The argument of the learned counsel for the respondent-proposed defendant with regard to clubbing of cases is not seriously disputed by

the learned counsel for the petitioners, however, he submits that insofar as this the present I.A., is concerned, it warrants interference. A perusal of the material placed before the Court would show that the plaint schedule property appears to be a part of joint family property of both parties and suit for partition is pending. The material on record also discloses that three suits are pending between the same parties in respect of the same property before the very same Court. O.S.No.208 of 2007 is filed by the present petitioners against one T. Bhaskar Naidu for injunction and declaration against the proposed defendant and the petitioners herein for partition of the very same property into four equal shares and to allow one such share to him. O.S.No.288 of 2012 is also filed by T. Bhaskar Naidu against the petitioners herein seeking injunction restraining the defendants therein from interfering with the plaint schedule property. Apart from that, the record also shows filing of O.S.No.270 of 2011 by the proposed defendant, Sri T. Ananda Naidu, against the petitioners herein and others seeking partition of the property into four equal shares and allot one such share to him. From the above, it is clear that suits are pending between the parties and all of them are at various stages before the Court of the Additional Senior Civil Judge, Chittoor. In order to avoid conflicting judgments, this Court is of the opinion that it would be just and proper if all the suits are tried and heard together. In view of the above findings, the argument of the learned counsel for the petitioners that the respondent-proposed defendant herein has come to Court at a belated stage may not carry much weight, though it may be require reframing of issues, or, if necessary, additional

evidence to be adduced. But, at the same time, it is also to be noted that, some of the suits which are pending between the parties are at their inception and trial has either just commenced or has not yet commenced. Therefore, it cannot be said that the order of the trial Court would further delay the proceedings. Since the proposed defendant is also claiming a right and share in the property in dispute, it would be just and proper if he is added as one of the defendants in the present suit filed for declaration of right, title and possession of the schedule property.

8. Having regard to the above, this Court is of the view that the order under challenge warrants no interference. Further, this Court also directs the Additional Senior Civil Judge, Chittoor to try all the suits which are pending between the parties in respect of the schedule property together and pass appropriate orders in accordance with law.

9. Civil Revision Petition is accordingly disposed of.

Miscellaneous petitions pending, if any, in this C.R.P., shall stand closed. No order as to costs.

C. PRAVEEN KUMAR, J

8th February, 2017
MRR