

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.4017 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful respondents/ defendants 2 and 3, is directed against the orders, dated 03.07.2017, of the learned XII Additional Chief Judge, City Civil Court, at Secunderabad, passed in I.A.No.1133 of 2015 in O.S.No.218 of 2014.

2. I have heard the submissions of *Sri Naresh Reddy Chinnolla*, learned counsel appearing for the petitioners/ defendants 2 and 3 (hereinafter, 'the defendants 2 and 3'), and of *Sri Vinod Singh*, learned counsel appearing for the 1st respondent/ plaintiff (hereinafter, 'the plaintiff'). I have perused the material record.

3. To begin with, it is to be noted that the plaintiff filed a suit for partition and for granting a preliminary decree allotting 1/ 12th share in item 1 and 1/ 6th share each in items 2 and 3 of the plaint schedule property and for other reliefs. The defendants 2 and 3 are also resisting the suit.

3.1 In the pending suit, the plaintiff filed the afore-stated application under Section 151 of the Code of Civil Procedure, 1908, to direct the defendants 2 and 3 to deposit to the credit of the suit, the monthly rent @ Rs.1,92,934/- from January, 2015. In the affidavit filed in support of the said application, the plaintiff stated the reasons that lead to the filing of the suit for partition and further stated that the defendants 2 and 3 leased out items 2 and 3 of the plaint schedule property to M/s. Vijaya Diagnostic Centre Private Limited, represented by Dr. S. Surender Reddy, and that they are collecting rents @

Rs.1,92,934/- per month and that the plaintiff has a share in the rents being collected by the said defendants. Having so stated the plaintiff sought a direction to the said defendants to deposit monthly rents @ Rs.1,92,934/- per month to the credit of the suit till the disposal of the suit.

3.2 The defendants 1 to 3 filed a counter affidavit resisting the said application and *inter alia* stating that even according to the plaint averments, which are disputed by the defendants 1 to 3, the plaintiff is only having a 1/6th share in items 2 and 3 of the plaint schedule property and that even according to the plaint averments, he is not entitled to the entire properties mentioned in items 2 and 3 of the plaint schedule and that the rent as alleged is not Rs.1,92,934/- and that the suit properties are not liable for partition for the reasons stated, in detail, in the written statement and that the plaintiff is not entitled to seek any directions against the defendants 2 and 3 to deposit rents and that the petition is not maintainable and is liable to be dismissed.

3.3 The plaintiff also filed a reply affidavit in the subject interlocutory application.

4. On merits and by the orders impugned in this revision, the trial Court directed the defendants 2 and 3 to deposit @Rs.1,92,934/- from January, 2015 onwards till disposal of the suit.

5. Learned counsel for the defendants contended as follows: "The trial Court neither adverted to the pleadings of the parties correctly nor considered the issue involved for determination in proper perspective. Having noted that there is a dispute about the quantum of rent, the trial Court did not resolve the said aspect. The trial Court failed to determine the quantum of rent and allowed the petition of the plaintiff having merely observed that the plaintiff has got a share in the suit schedule property and that the defendants 2 and 3 are admittedly collecting rents from the 10th respondent and that the claim of

the plaintiff is to be decided in the suit. Even though the plaintiff claimed that he has a share in the rents, the trial Court directed to deposit the entire alleged rent into Court even without deciding the core issues/ points and even without assigning any reasons much less valid reasons. Thus, the order impugned was passed without determining any of the issues or points involved for determination in the matter and that the direction to deposit rent was given without assigning valid reasons. Hence the order impugned is liable to be set aside and the petition of the plaintiff is liable to be dismissed.”

6. The learned counsel for the plaintiff supported the order of the Court below.

7. Be it first noted that M/s. Vijaya Diagnostic Centre Private Limited to which the items 2 and 3 of plaint schedule are leased out is not a party to the suit and the interlocutory application. The copy of the amended plaint placed on record reflects that there are 10 defendants in the suit and that Y. Radhika, the 10th defendant, was impleaded subsequently. The plaintiff and the defendants 1 to 9 are the parties to the subject interlocutory application filed by the plaintiff. There is no 10th respondent in the application. However, in the order impugned the trial Court referred to M/s. Vijaya Diagnostic Centre Private Limited as 10th respondent. The record produced before this Court does not disclose that the said M/s. Vijaya Diagnostic Centre Private Limited is impleaded as party 10th respondent. It remains unexplained as to why the trial Court made such a reference to the 10th respondent in the order impugned when there is no 10th respondent at all in the array of parties. It is not in dispute that a 3rd party who is not a party to the suit shall not be directly impleaded as party to any interlocutory application.

8. As rightly pointed out, when the plaintiff is not claiming the entire items 2 and 3 of the plaint schedule properties and is only claiming a share in the

said two items of property, which, of course, the defendants are denying, the impugned order of the trial Court directing the defendants 2 and 3 to deposit the entire alleged rent, which defendants 2 and 3 are allegedly collecting, is not justified and sustainable under facts and circumstances of the case. It is also the submission of the learned counsel for the defendants 2 and 3 that before deciding the application on merits, the trial Court ought to have given an opportunity to the parties to file and exhibit their respective documents and that the trial Court failed to give an opportunity to exhibit the documents including the lease deed entered into between 3rd respondent/3rd defendant and another on one hand and M/s. Vijaya Diagnostic Centre Private Limited on the other, which discloses the terms of the lease. Learned counsel for the plaintiff fairly submits that in the suit, the plaintiff claimed only a share in items 2 and 3 of the plaint schedule property, which are the subject matter of the present interlocutory application, and, that the plaintiff has not claimed rights in whole of the said items 2 and 3 of the plaint schedule property. It is also brought to the notice of this Court that the defendants 2 and 3 and the plaintiff are brothers and are sons of Y.Visweswar Rao, that is, the 1st defendant in the suit, and, that on his death, during the pendency of the suit, there would also be a change in the shares of the parties as per the alleged claim of the plaintiff, even if the alleged claim of the plaintiff is true.

9. A plain consideration of the facts and submissions and a perusal of the impugned order make it apparent that the trial Court failed to deal with the matter in the manner expected of it, but, simply disposed of the interlocutory application in a very casual manner. The impugned order passed without assigning any sustainable and valid reasons and without proper consideration of the pleadings and contentions, therefore, warrants interference. Further, in view of the submissions and for the reasons assigned, this Court finds that the subject Interlocutory Application requires to be remitted to the trial Court for

disposal afresh, on merits and in accordance with procedure established by law. In the well considered view of this Court such a course sub-serves the ends of justice.

10. In the result, the Civil Revision Petition is allowed. As a sequel, the order dated, 03.07.2017, passed in I.A.No.1133 of 2015 in O.S.No.218 of 2014 is set aside and the said interlocutory application is remitted to the trial Court for disposal afresh, on merits and in strict accordance with the procedure established by law. The trial Court shall endeavour to dispose of the said application as expeditiously as possible and preferably within one month from the date of receipt a copy of this order.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

05.09.2017
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M. SEETHARAMA MURTI, J