

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

CIVIL REVISION PETITION No.4227 of 2017

ORDER:

Heard Sri K.Rathanga Pani Reddy, learned counsel for the petitioners, and Sri G.Sravan Kumar, learned counsel for the respondents, apart from perusing the material available before this Court.

This revision, filed by the plaintiffs in O.S.No.24 of 2015 on the file of the Senior Civil Judge, Nandikotkur, assails the order, dated 20.06.2017, passed in I.A.No.90 of 2017 in O.S.No.24 of 2015.

Petitioners herein instituted the said suit for mandatory injunction for removal of the alleged encroachments made by the first defendant. In the said suit, the plaintiffs-petitioners herein filed I.A.No.90 of 2017 under the provisions of Order I Rule 10 CPC r/w Rule 28 of the Civil Rules of Practice seeking impleadment of the respondent Nos.2 to 4 as defendant Nos.2 to 4. The said application was contested by the defendant-first respondent herein by filing counter. The learned Senior Civil Judge, Nandikotkur, by way of the questioned order, dismissed the said application. Hence, the present revision.

It is contended by the learned counsel for the plaintiffs-petitioners herein that the order impugned is erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Order I Rule 10 CPC. It is the further

submission of the learned counsel that, in the event of the application filed by the petitioners herein being allowed, there can be finality for the issue and the same would also avoid the multiplication of the litigation. It is further contended by the learned counsel that the reasons assigned by the learned Senior Civil Judge, while dismissing the application, are neither sustainable nor tenable in the eye of law.

On the contrary it is vehemently contended by the learned counsel for the first respondent-defendant that there is no error nor there exists any infirmity in the impugned order and, in the absence of the same, the order impugned is not amenable for any correction by this Court under Article 227 of the Constitution of India. It is also the submission of the learned counsel that, the present application, it is an attempt on the part of the plaintiffs to harass the defendant. It is also the submission of the learned counsel that earlier the plaintiffs filed O.S.No.200 of 2009 on the file of the Junior Civil Judge, Nandikotkur against the defendant and one Sri Pinjari Kamal Saheb for permanent injunction and the said suit was dismissed on 11.08.2014 and, against the said judgment and decree, the petitioners herein preferred A.S.No.2 of 2014 and the same was allowed only with regard to the relief of using 'RRR' rasta.

In the above background, now the issue that emerges for consideration of this Court is: "whether the order passed by the learned Senior Civil Judge, which is impugned in the

present revision, is in accordance with law or whether the same warrants any interference of this Court under Article 227 of the Constitution of India”?.

In the affidavit, filed in support of I.A.No.90 of 2017, the plaintiffs-petitioners herein stated that the defendant-first respondent encroached upon the public rasta and constructed a house and that all the public rastas do vest in the Government. While saying so, the petitioners herein made a request for impleadment of respondent Nos.2 to 4 herein as defendant Nos.2 to 4 in the suit.

On the contrary, in the counter filed by the defendant-first respondent herein, the defendant stated that the proposed respondents are not necessary parties and also found fault with the plaintiffs for not adding them in the beginning. A perusal of the order under challenge clearly discloses that the learned Judge categorically recorded a finding that all the roads in the Gram Panchayats do vest in the Gram Panchayats only and the Divisional Engineer, Roads & Buildings and the District Collector have no power with regard to the maintenance of roads in the Gram Panchayat and the Gram Panchayat has enormous powers under the Panchayat Act. While saying so, the learned Judge also stated that the District Collector and the Divisional Engineer, Roads & Buildings are not necessary parties. It is also to be noted that the learned Judge refused to add the Gram Panchayat also on the ground that the plaintiffs-

petitioners did not seek any amendment in the prayer portion. To the extent of the said portion, this Court is not in agreement with the order passed by the learned Judge. In the consequential amendments, at S.No.3, the petitioners herein specifically sought for insertion of the word 'defendants' in the place of 'defendant'. Having categorically found that the roads in the Gram Panchayats vest in the Gram Panchayats only, there is no justification on the part of the Court below in refusing to add the Gram Panchayat also.

For the aforesaid reasons, the Civil Revision Petition is allowed in part, directing impleadment of the Panchayat Secretary, Gram Panchayat office, Kodumur Village, Midthur Mandal, Kurnool District as defendant No.2. I.A.No.90 of 2017 is allowed, as a consequence thereof, to the extent of the Panchayat Secretary. In respect of the other defendants, the order of the learned Senior Civil Judge, Nandikotkur is confirmed.

As a sequel thereto, miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

06th December, 2017
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