

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.2647 of 2012

ORDER:

The plaintiff in O.S.No.690 of 2009, filed for relief of permanent and mandatory injunction reliefs against the sole defendant/1st defendant, from the contest of the sole defendant in the written statement saying the properties stand in the name of his wife, the proposed 2nd defendant and he is managing and not claiming ownership, thereby sought for impleadment of Smt. Obulamma as 2nd defendant in I.A.No.32 of 2012. The contest in opposing the petition is that they never made any illegal constructions and the construction made are legal and it is only to harass the wife of the sole defendant by plaintiff, he is seeking for her impleadment. The lower Court dismissed the petition with observation in Para 6 that merely because the property claimed by 1st defendant as in the name of his wife she is no way a necessary party to the suit.

The learned counsel for the revision petitioner contended that the lower Court went wrong in dismissal of the application instead of allowing. Whereas the learned counsel for the respondents including the proposed party supported the order of the lower Court.

Heard and perused the material on record.

In fact as per Order I Rule 10 Clause (2) CPC, the Court to implead any party, two contingencies require to consider as to impleadment of a party is whether a necessary party or at least a proper party. Necessary party is one without whose presence the suit cannot be decreed, whereas proper party is one without his

presence the suit can be disposed off but not effectively. Plaintiff though dominus litis on whom to implead, the necessary party must be impleaded with no choice. Here the suit for injunction is on the claim that the defendant made construction over the property of plaintiff illegally and in seeking prohibitory and mandatory injunction reliefs and from the written statement filed by the sole defendant it is his say that the property belongs to them and standing in the name of his wife, (who is the proposed 2nd defendant) and the constructions are legal. The plaintiff sought for her impleadment and when the written statement of the sole defendant says property in the name of his wife-the proposed 2nd defendant and he is managing on her behalf she is if not a necessary party, at least a proper party and without considering the same, the lower Court went wrong in dismissing the impleadment petition.

Having regard to the above, the Civil Revision Petition is allowed by setting aside the dismissal order of the lower Court dated 27.02.2012 in I.A.No.32 of 2012 by allowing the petition with a direction to the trial Court to permit the impleadment of the 2nd defendant and the plaintiff to carry the amendment within 14 days from the date of receipt of this order.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 14.12.2017
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