

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2921 of 2011

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the respondent in I.A. No.370 of 2010 in A.S. No.117 of 2007 on the file of II Additional District Judge, Kurnool at Adoni, in allowing the petition filed by 1st respondent under Order I Rule 10 C.P.C. for impleading respondent Nos.2 to 4 herein w.e.f 26.09.2002 i.e., the date of filing of suit holding that they are proper and necessary parties to the appeal.

2. Heard Sri T.S.Anand, learned counsel for the petitioners and Sri R.Prasad, learned counsel for the respondents.

3. During pendency of the revision, the sole petitioner died and his LRs were brought on record as petitioner Nos.2 to 4 vide order dated 14.03.2016 in C.R.P.M.P. No.1582 of 2016 in C.R.P. No.2921 of 2011.

4. The few facts that are necessary for filing the present petition are that respondent No.1 filed the suit based on the endorsement on agreement of sale, for Rs.1,11,000/-. On contest, the suit was dismissed on various grounds but respondent Nos.2 to 4 herein filed an application under Order I Rule 10 C.P.C as they are proper and necessary parties to the suit to over come the error in the judgment and the appellate Court allowed the said application assigning its own reasons based on law declared by various Courts permitting

them to come on record w.e.f. 26.09.2002 leaving it open to the parties to raise a question of limitation and permitting the Court to decide the same. Aggrieved by the above order, the present revision is filed on various grounds.

5. Learned counsel for petitioners contends that impleading the respondent Nos.2 to 4 w.e.f. 26.09.2002 to the appeal as proper and necessary parties is an error, since the appellate Court allowed the application subject to the question of limitation being decided in the appeal on the basis of the pleadings and evidence placed by the parties. Based on the finding of the appellate Court in the operative portion i.e., para No.17, learned counsel for petitioners contends that the said order is erroneous.

6. However, learned counsel for the respondents supported the impugned order and finding of the appellate Court that respondent Nos.2 to 4 are proper and necessary parties, therefore, they are permitted to come on record w.e.f. 26.09.2002 while permitting the parties to raise the plea of the limitation appears to be incorrect. Therefore, the question is with regard to date of impleadment of respondent Nos.2 to 4 in the suit.

7. According to Section 21 (1) of the Limitation Act, where after the institution of a suit, a new plaintiff or, defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party. Provided that where the court is satisfied that the omission to include a new plaintiff or

defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

8. Thus, from the reading of Section 21, unless the Court records reason that respondent Nos.2 to 4 are deemed to have been impleaded as on the date of suit and comes to the conclusion that due to mistake in good faith, the respondent Nos.2 to 4 could not be impleaded as parties to the suit, the Court ought not to have recorded such finding that they are impleaded as parties w.e.f. 26.09.2002 without recording that finding that there is a bonafide mistake on the part of the 1st respondent to implead the respondent Nos.2 to 4. On the other hand it is left open to the parties to raise plea of limitation in appeal, as such recording a finding that the respondents 2 to 4 are deemed to be parties w.e.f. 26.09.2002 is erroneous and liable to be set aside. Accordingly, the finding impleading respondents 2 to 4 w.e.f. 26.09.2002 is set-aside.

9. The respondent Nos.2 to 4 are permitted to come on record as plaintiffs/ respondents leaving it open to the petitioners to raise plea and permitting the respondents to prove that they are bonafide parties for impleading themselves in the appeal.

10. With the above direction, the revision is allowed in part deleting the words "with effect from 26.09.2002" in the operative portion at para No.17 of the impugned order.

11. Consequently, Miscellaneous Petitions, if any, pending in this revision shall stand closed. There shall be no order as to costs.

M.SATYANARAYANA MURTHY,J

Date:05.06.2017
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