

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.3714 OF 2011 AND 4797 OF 2012

COMMON ORDER:

One V. Venkateswaramma, wife of Nagaiah, as sole plaintiff in O.S. No.356 of 2008, filed this suit against sole defendant Vaka Venugopal Goud for specific performance of the contract for sale dated 25.12.1989. The suit is pending. Prior to the filing of the said suit for specific performance, sons of Venugopal Goud by name Naveen and Aditya, filed a suit for partition in O.S. No.427 of 1993 against their father, Venugopal Goud; that suit was preliminarily decreed on 05.02.1994 itself which is more than four years prior to the filing of the suit for specific performance by Venkateswaramma against Venugopal Goud. Pursuant to the preliminary decree in O.S. No.427 of 1993, the two sons of Venugopal Goud, the defendant, filed a final decree application to work out the rights defined in the preliminary decree, seeking in I.A. No.709 of 2008. The final decree petition is pending. In the said final decree petition, the plaintiff in O.S. No.356 of 2008 by name Venkateswaramma sought for impleadement as co-respondent; that petition was on contest ended in dismissal on 04.06.2012; impugning the same, C.R.P. No.4797 of 2012 filed.

Said Venkateswaramma sole plaintiff against the sole defendant in O.S. No.356 of 2008 supra sought for impleadement of the two plaintiffs Naveen and Aditya of O.S. No.427 of 1993 as defendants 2 and 3 in the specific performance suit, by filing I.A. No.853 of 2011 and the same on contest was ended in dismissal on 11.07.2011 and against which C.R.P. No.3714 of 2011 is maintained.

Heard both sides and perused the material on record.

It is not even the case of the said Venkateswaramma, plaintiff in O.S. No.356 of 2008 for specific performance, that other than the defendant Venugopal Goud, there are other parties also to the agreement much less his sons Naveen and Aditya, proposed to be added as defendants 2 and 3 in that suit. Once they are not parties and it is not even a case that the contract for sale entered by the father's family manager on behalf of the minors if at all to bind, the question of their impleadment as defendants 2 and 3 in O.S. No.356 of 2008 does not arise for they are neither necessary nor proper parties to the specific performance suit and as such so far as dismissal of I.A. No.853 of 2011 by the lower Court dated 11.07.2011 concerned, there is nothing to interfere for this Court but for to say none of the observations in the dismissal order will influence the mind of the Court in deciding the suit O.S. No.356 of 2008 on own merits.

Coming to C.R.P. No.4797 of 2012, the dismissal order of the lower Court is with the observations that the plaintiff in O.S. No.356 of 2008 in seeking to implead as co-respondent to I.A. No.709 of 2008, final decree petition in partition preliminary decree of the suit O.S. No.427 of 1993 came to the Court very belatedly even the suit is pending since 1993 is untenable. Even as per the very plaint, though the sale agreement is prior to the filing of O.S. No.427 of 1993, on dated 25.12.1989, there is nothing even from the impugned order to impute any knowledge to the plaintiff in O.S. No.356 of 2008 about said suit O.S. No.427 of 1993.

Leave it apart, even any such intimation to presume for argument sake; that is not the plea of more particularly for the fact that she sought for impleadment only in the final decree application and not even seeking for reopening the preliminary decree.

It is the settled law that from subsequent events or otherwise, any party can seek for impleadment in a final decree proceeding to work out any rights including under equity rather than driving to file a separate suit, more particularly, to shorten the litigation and to give quietus to the *lis*. Once such is the case, the dismissal order of the lower Court of I.A. No.661 of 2011 in seeking impleadment of the said Venkateswaramma as co-respondent to I.A. No.709 of 2008 is unsustainable, as being a plaintiff in O.S. No.356 of 2008 if at all that suit is decreed and final decree proceedings not closed entitled to work out the rights under equity to allot the share of the defendant in O.S. No.356 of 2008 to the share of the vendee under the contract for sale if at all.

Having regard to the above, the C.R.P. No.3714 of 2011 is dismissed and C.R.P. No.4797 of 2012 is allowed. The trial Court shall give early disposal of the suit *vis-a-vis* the final decree application respectively, individually.

As a sequel, miscellaneous petitions, if any, pending in these Revisions shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 29.12.2017.
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