

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

A.S.No.488 of 2015

JUDGMENT:

This appeal is filed by the plaintiffs against the judgment dated 10.04.2015, in O.S.No.970 of 2012, on the file of the XIV Additional District & Sessions Judge, Ranga Reddy District, by and under which, the learned District Judge dismissed the suit.

For convenience, the parties are referred to as 'plaintiffs' and 'defendants'.

The brief facts of the case are as under:

The plaintiffs filed the suit to declare them as legal heirs of deceased Polepaka Parmathma @ Prakash. The dispute is with regard to two plots said to have been acquired by the deceased Polepaka Parmathma @ Prakash. The plaint A & B schedule plots were said to be originally allotted to one V.Mallaiah and J.R.Indira Devi. Subsequently, the said Polepaka Parmathma @ Prakash is said to have purchased the said two plots from the said two allottees under unregistered sale deeds dated 13.02.1987 and 26.02.1994 respectively. Even before the sale transaction could be completed, Polepaka Parmathma @ Prakash who is said to be working as Driver in APSRTC expired.

The appellants/plaintiffs and 2nd respondent/2nd defendant are claiming to be the brothers and sister of the deceased Polepaka Parmathma @ Prakash. They obtained the legal heir certificate from the revenue authorities and approached the 1st defendant-HMDA for mutating the two plots in their names, since they are only the legal heirs of the deceased Polepaka Parmathma @ Prakash. The 1st defendant after

perusing the material placed before it, informed the plaintiffs that there is no information about the plots being purchased by Polepaka Parmathma @ Prakash from the original allottees and that apart, after the death of Polepaka Parmathma @ Prakash, one P.Jayalakshmi filed a requisition to transfer the two plots in her favour, claiming herself to be the wife of the deceased Polepaka Parmathma @ Prakash. However, subsequently, another lady by name, B.P.Jayalaxmi, W/o.B.Premachary, resident of Somajiguda, claiming herself to be the nominee of the original allottee for plot No.23, made a requisition to get her name mutated in respect of plot No.23. Before the 1st defendant-HMDA there were three claims for the schedule property, therefore, the 1st defendant-HMDA advised the plaintiffs to approach the civil court for adjudicating the issue.

In spite of that, the plaintiffs filed the suit showing only the 1st defendant-HMDA and their sister as 2nd defendant, and they did not implead either of the two claimants, who have approached the 1st defendant-HMDA claiming right over the subject property. After trial, the Court below dismissed the suit solely on the ground that even though the plaintiffs were aware of the conflicting claims made by one P.Jayalakshmi and B.P.Jayalaxmi, they did not implead them as parties to the suit and in the absence of proper and necessary parties, the dispute about the succession to the property of the deceased Polepaka Parmathma @ Prakash cannot be adjudicated. In the penultimate paragraph of the impugned judgment, the trial judge specifically observed that the plaintiffs shall implead the rival claimants who made claims before the 1st defendant-HMDA for proper adjudication of the issue and since the

plaintiffs failed to implead them as parties, the suit is bad for non-joinder of necessary parties and accordingly, dismissed the suit.

The contention of the learned counsel for the appellants/plaintiffs is that the plaintiffs were not aware about any other claim being made by any other person. The learned counsel contended that in the absence of there being any specific plea and issue about there being rival claims, the court below erred in dismissing the suit solely on the ground of not impleading proper and necessary parties. However, what is noticed is that the 1st defendant in his written statement categorically asserted about the claim being made on behalf of the two other allottees in respect of the schedule properties and even though there was no issue, the plaintiffs ought to have taken steps to implead the persons who have set up rival claims over the schedule properties. The learned counsel further submitted that the court below at least ought to have called upon the plaintiffs to take appropriate steps in the matter instead of straight way dismissing the suit.

After having heard the arguments of the learned Counsel appearing for the appellants/plaintiffs and perused the impugned judgment, I am of the opinion that it is a fit case where the matter needs to be remanded for fresh adjudication and therefore it may not be appropriate to go into the merits of the case. However, suffice it to state that the two appellants and the 2nd respondent/defendant are the brothers and sister of the deceased Parmathma @ Prakash, who claims to have had two plots and the first respondent/defendant namely the HMDA has no objection for transferring the same in favour of the persons who could establish their entitlement in a competent civil Court. Therefore, the suit came to be

filed and in written statement filed by the HMDA, it was informed that two other women by name P.Jayalaxmi and B.P.Jayalaxmi submitted petitions before the authority each one of them claiming one plot. While P.Jayalaxmi claims to be the legally wedded wife of the deceased Parmathma, the other lady by name B.P.Jayalaxmi claims herself to be the nominee of one Indira Devi from whom the deceased Parmathma is said to have purchased one of the suit schedule plots.

In the trial Court, both the appellants/plaintiffs and the first defendant have produced evidence and having considered the same, the learned District Judge has held that the appellants/plaintiffs shall implead P.Jayalaxmi and B.P.Jayalaxmi, referred to above, for proper adjudication of the dispute. However, since they are not impleaded, the learned District Judge has dismissed the suit for non-joinder of necessary parties. This approach of the learned District Judge is assailed by the appellants/plaintiffs on the ground that if the trial Court came to the conclusion that the presence of the two women is necessary for proper adjudication, an opportunity should have been afforded to the appellants/plaintiffs to take steps or even the Court *sue motu* can direct the impleading of the necessary parties in view of the provision contained in Order I Rule 10 (2) of the C.P.C. Learned Counsel rightly submits that since there was neither any pleading nor an issue about the maintainability of the suit, the appellants/plaintiffs were not aware that the suit is bad for non-joinder of parties and liable to be dismissed. I find substance in the submission of the learned Counsel appearing for the appellants/plaintiffs. The learned trial Judge has not dismissed the suit of the appellants/plaintiffs on merits. As stated above, while holding that the

appellants/plaintiffs shall implead necessary parties for effective adjudication but since they have not been impleaded, the suit was dismissed.

There is no dispute with regard to the proposition that it is for the parties to take appropriate steps for impleading the necessary and proper parties. However, if the Court is of the opinion that there are parties, whose presence is necessary for effective adjudication of the suit, have not been impleaded and the plaintiffs do not take appropriate steps, for reasons best known to them, the Court can use its power under Sub-Rule (2) of Rule 10 of Order-I C.P.C., which reads as under:-

“Order 1 Rule-10(2) CPC:

(2) Court may strike out or add parties—The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

In the instant case, it is submitted that the brothers and sister of the deceased Parmathma are not aware about the deceased having married any woman, more particularly P.Jayalaxmi, who claims herself to be the wife of their deceased brother. It is submitted that since they have been living together, it is not possible that they would be unaware about any marriage in between their brother and P.Jayalaxmi. Therefore, according to them, the said P.Jayalaxmi cannot claim herself to be the legally wedded wife of their brother. However, since it has come out in the written statement filed by the first defendant/HMDA that the said

woman has made a representation before the authorities even if the appellants/plaintiffs are not inclined to treat the said Jayalaxmi as wife of their brother, for effective and complete adjudication of the controversy and to settle all the questions involved in the suit, if the Court finds it necessary to join the said Jayalaxmi it could have exercised the power vested in the Court, referred to above. However, the learned District Judge has neither called upon the appellants/plaintiffs to implead P.Jayalaxmi and B.P.Jayalaxmi, referred to above, nor did the Court directed addition of those two women. Therefore, the matter need to be remanded to the trial Court for fresh disposal, firstly after framing an additional issue and afford an opportunity to implead the necessary and proper parties by filing an application.

In the result, the appeal is allowed, and the judgment and Decree is set aside and the matter is remanded back to the trial Court for fresh disposal, in accordance with law, by framing an additional issue, if necessary, and the appellants/plaintiffs shall file proper application for impleading necessary and proper parties which shall be allowed and opportunity should be afforded to all the parties to lead further evidence, if necessary. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed, in consequence.

M.S.K.JAI SWAL,J

Date: 13.04.2017
Dsr/Smr