

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.331 of 2018

ORDER:

This Revision is filed challenging the order dt.18-11-2017 in I.A.No.655 of 2017 in O.S.No.32 of 2009 of the IV Additional District Judge, Tirupati.

2. The said suit had been filed by 1st respondent against respondent Nos.2 to 27 for partition of the plaint schedule properties and for allotment of 1/8th share to him with separate possession.

3. The petitioner herein is a third party to the said suit and claims to have interest in one particular item which is subject matter of the suit.

4. He had filed O.S.No.85 of 2015 on the file of Senior Civil Judge, Rajampet for a permanent injunction against respondent Nos.3 to 6 and 1st respondent.

5. He filed I.A.No.655 of 2017 in O.S.No.32 of 2009 alleging that he ought to be impleaded as 28th defendant under Order I Rule 10 C.P.C. and contending that item Nos.10 to 13 of the plaint schedule in O.S.No.32 of 2009 belong to his family and are in his possession and are subject matter of O.S.No.85 of 2015. He denied that the said items are joint family properties of respondent Nos.1 to 7 and alleged that he came to know about O.S.No.32 of 2009 only after he filed

O.S.No.85 of 2015 before the Senior Civil Judge, Rajampet. He contended that he was advised by legal experts to get himself impleaded herein.

6. Counter-affidavits were filed by respondents opposing his impleadment. The allegations made by petitioner were denied and it is pointed out that petitioner is neither a member of the joint family nor purchaser of the properties of the joint family, and partition suit O.S.No.32 of 2009 cannot be converted into the title suit to decide the issue of title of petitioner and his ancestors and respondents.

7. By order dt.18-11-2017, the Court below dismissed the said application. After referring to the contentions of the petitioner, it observed that petitioner made a claim for only Ac.0.04½ cents in O.S.No.85 of 2015, that petitioner needed to explain how much extent he is entitled to in the schedule in O.S.No.32 of 2009 and this indicates that petitioner himself is not sure about the interest which he is claiming. It also held that petitioner filed this application in October, 2017 though he was aware of pendency of O.S.No.32 of 2009 in 2016 itself and he had also made no attempt to get the suits tried together by seeking transfer of his suit pending before Senior Civil Judge Court, Rajampet along with O.S.No.32 of 2009.

8. Challenging the same, this Revision is filed.

9. Learned counsel for petitioner contended that the reasoning of the Court below cannot be sustained since petitioner is claiming title

to a portion of the land covered by the present suit, he is a necessary party to the said suit and is required to be impleaded therein.

10. Admittedly, O.S.No.32 of 2009 is a suit for partition filed by 1st respondent against respondent Nos.2 to 8 and other persons claiming through them. The petitioner is neither a member of the joint family nor a purchaser or a lessee of any of the joint family members which are sought to be partitioned in O.S.No.32 of 2009. He is setting up a rival claim to some of the items shown to the schedule in O.S.No.32 of 2009. In fact the injunction sought by him in O.S.No.85 of 2015 is confined only to Ac.0.4¾ cents in one survey number.

11. In my considered opinion, if the petitioner is allowed to be impleaded in O.S.No.32 of 2009, the said suit for partition would have to be tried as if it is a title suit between the petitioner and the parties already impleaded in O.S.No.32 of 2009. It would thus change the nature and character of the suit O.S.No.32 of 2009 and if the petitioner is impleaded, it would amount to mis-joinder. Since petitioner has already filed O.S.No.85 of 2015 before the Senior Civil Judge, Rajampet asserting his title, it is open to the petitioner to pursue his remedy therein in respect of the property claimed by him, and he cannot be permitted to join as a party in O.S.No.32 of 2009 and adjudicate his claim for title to the properties, some of which subject matter of O.S.No.32 of 2009.

12. I therefore see no error of jurisdiction in the order passed by the Court below refusing petitioner's impleadment.

13. Therefore, this Revision fails and it is accordingly dismissed at the stage of admission. No costs.

14. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 06-04-2018

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