

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.2937 OF 2017

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.86 of 2017 in O.S.No.5 of 2007 dated 11.04.2017 passed by the Senior Civil Judge, Jangaon.

For the sake of convenience, the parties hereinafter will be referred as arrayed in I.A.No.86 of 2017 in O.S.No.5 of 2007.

O.S.No.5 of 2007 was filed for declaration of title and consequential injunction, in alternative, for partition by the petitioners 1 to 7. The defendants therein raised a contention that, in the absence of proper and necessary parties who are entitled to claim share, a suit for partition is not maintainable, without filing a written statement. Having noticed about the non-joinder of the necessary parties, the plaintiffs 8 & 9 before the Court below filed petition under Order I Rule 10 C.P.C on the ground that they have got direct interest in the property and in their absence, the suit cannot be adjudicated effectively and completely and thereby, they are proper and necessary parties to the suit.

The proposed parties i.e. 8th & 9th plaintiffs appeared before then Court below and filed counter, contending that Sri Syed Ahmed who is sought to be impleaded as plaintiff no.9 is not interested to come on record and the affidavit was obtained without his consent. The 8th plaintiff also filed a separate counter while disputing the right to implead her, contended that she is not

interested in the properties of her mother, as she received fully the money and properties of her father, but since the heirs of late Hasan Sharief namely the sons of Md. Esa is taking objection that the 8th plaintiff is not impleaded and the suit is not maintainable, she proposed to implead herself as one of the heir of late Noornissa Begum and Kulsum Bee, thereby, filed petition and finally requested to implead her as 8th plaintiff.

The Trial Court upon hearing arguments of both the counsel, passed the impugned order holding that they are proper and necessary parties in the suit for partition and declaration of title, since, in their absence, the claim cannot be adjudicated effectively and completely.

Aggrieved by the order of the Trial Court, the present civil revision petition is filed under Article 227 of the Constitution of India, mainly raising a contention that they have no interest in the property and they cannot be impleaded as plaintiffs, more particularly, when they are not inclined to be impleaded as plaintiffs and sought to set-aside the order.

Admittedly, the suit was filed for primary relief of declaration of title and alternative relief of partition of suit schedule property. The proposed parties are the children of deceased Noorissa Begum and Iqbal Begum and they are also entitled to claim share, but, they are not inclined to come on record as plaintiffs. In a *lis* for partition, the legal representatives of the deceased are entitled to come on record to claim interest over the property, as plaintiff or defendant, irrespective of their array either as plaintiff or defendant in a suit for partition, they are entitled to claim share in

the property. When the petitioners are not interested to claim right in the property, to cure the defect of non-joinder of necessary parties to claim partition, they can be impleaded as defendants instead of plaintiffs, in view of their disinclination to come on record as defendants to prosecute the suit. But, the Trial Court despite their disinclination impleaded them as plaintiffs. Hence, the order of the Court below is erroneous to the extent of impleading plaintiffs 8 & 9. Therefore, the order of the Trial Court is modified, directing the impleadment petitioners as 8th & 9th respondents/defendants in the suit.

With the above direction, the civil revision petition is disposed of.

Consequently, miscellaneous applications pending if any, shall stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:30.01.2018

SP