

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.747 of 2018

ORDER:

This civil revision petition is filed by the plaintiff, under Article 227 of the Constitution of India, assailing the order dated 05.12.2017 passed in I.A. No.187 of 2014 in O.S.No.262 of 2011 on the file of the Additional Senior Civil Judge Court, Srikakulam.

2. Heard the learned counsel for the petitioner. In spite of service of notice, respondent Nos.1 to 3 did not choose to appear and oppose the petition; hence, this Court is inclined to pass the order on merits.

3. The point that arises for consideration in this revision petition is:

Whether there is any illegality, irregularity or impropriety in the impugned order?

4. A perusal of the record reveals that the petitioner filed O.S.No.262 of 2011 on the file of the Additional Senior Civil Judge Court, Srikakulam, against respondent Nos.2 and 3, who are defendant Nos.1 and 2 respectively, seeking perpetual injunction in respect of 30 X 40 feet vacant land in Town Survey No.18/1, Survey No.154, Madhura Nagar Srikakulam Municipality (hereinafter referred to as, the suit schedule property). Respondent Nos.2 and 3 filed written statement, *inter alia*, contending that the suit is not maintainable. During the pendency of the suit, first respondent filed I.A.No.187 of 2014 under Order I Rule 10 of CPC seeking to implead him as defendant No.3 in the suit. The second respondent filed counter stating that he has no objection to implead first respondent as defendant No.3. The petitioner and third respondent

filed separate counters *inter alia* contending that the first respondent is neither necessary nor proper party to the suit; hence, the petition is liable to be dismissed. On behalf of the petitioner herein, Exs.R.1 and R.2 were marked. Basing on the material available on record, the trial Court allowed the petition. Hence, the revision.

5. It is not in dispute that the first respondent purchased vacant site from the father of the petitioner. It is the case of the first respondent that the father of the petitioner agreed to donate the suit schedule property for the purpose of formation of the road. Except the averment made in the affidavit, the first respondent did not produce any document, to that effect, before the trial Court. It is the further case of the first respondent that the petitioner is keeping debris on the road thereby causing inconvenience to them. A perusal of the plaint reveals that there exists a road up to the house of the first respondent. The suit schedule property is situated on the south of the road, which is the subject matter of the suit.

6. The trial Court, in the impugned order, made an observation that the first respondent is not a necessary party, but a proper party to the suit. If really the first respondent has right over the alleged road, he ought to have filed the suit for declaration of easementary right over the alleged road. The petitioner filed O.S.No.262 of 2011 for permanent injunction restraining respondent Nos.2 and 3 not to interfere with the suit schedule property. It is not the case of the petitioner that the first respondent, who is intending to come on record as defendant No.3, is interfering with the suit schedule property. Virtually the petitioner is not is not claiming any relief

against the first respondent. If the first respondent has any interest or any semblance of interest over the suit schedule property, the remedy available to him is by way of filing a separate suit for declaration of his right and other consequential reliefs if any. If the petition is allowed, it would certainly amount to change of the cause of action thereby alter the nature of the suit. The trial Court, without considering these aspects, simply allowed the petition as if no prejudice would be caused to the petitioner. Even in the absence of the first respondent, the trial Court can adjudicate O.S. No.1690 of 2016 completely and effectively.

7. Having regard to the facts and circumstances of the case, this Court is of the considered view that the first respondent is neither necessary party nor proper party to the suit; hence, there is no need to implead him as defendant No.3 in O.S.No.1690 of 2016. The trial Court allowed the petition on untenable and erroneous grounds. The findings recorded by the trial Court are not sustainable either on facts or in law. Viewed from any angle, the petition is liable to be dismissed.

8. In the result, the civil revision petition is allowed, setting aside the order dated 05.12.2017 passed in I.A. No.187 of 2014. Consequently, I.A.No.187 of 2014 in O.S.No.1690 of 2011 on the file of the Additional Senior Civil Judge Court, Srikakulam is dismissed. Miscellaneous petitions, if any pending in this revision shall stand closed.

T.SUNIL CHOWDARY, J

Date: 14.12.2018
YS