

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.1197 of 2018

ORDER:

This civil revision petition is filed by the first plaintiff, under Article 227 of the Constitution of India, assailing the order dated 29.8.2017 passed in I.A. No.436 of 2017 in O.S.No.109 of 2010 on the file of II Additional Junior Civil Judge Court, Tadepalligudem.

2. No representation on behalf of the respondents on 17.12.2018 and 19.12.2018. Today also, there is no representation on behalf of the respondents in the Fore Noon and After Noon; therefore, this Court is inclined to pass the orders on merits.

3. Heard the learned counsel for the petitioner.

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

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

5. The petitioner and respondent Nos.13 and 14 filed O.S.No.109 of 2010 on the file of II Additional Junior Civil Judge Court, Tadepalligudem, against respondent Nos.1 to 10 for perpetual injunction in respect of the suit schedule property. While the things stood thus, the petitioner and respondent Nos.13 and 14 filed I.A.No.436 of 2017 under Order I Rule 10 of CPC to implead respondent Nos.11 and 12 as defendant Nos.11 and 12 in the suit. The respondent Nos.1 to 10 and respondent Nos.11 and 12 filed separate counters *inter alia* contending that respondent Nos.11 and 12 are not necessary or proper parties to the suit. The trial Court, after affording reasonable opportunity to all the parties,

dismissed the petition on the sole ground that the trial has not commenced and the petition is not only technically bad but also baseless. Hence, the revision.

6. A perusal of the record reveals that so far the trial has not commenced. It is the case of the petitioner that during the pendency of the suit, respondent Nos.3 and 4 executed a sale deeds dated 27.7.2016 in favour of respondent Nos.11 and 12 in respect of entire 'A' schedule property. The factum of purchase of the property by respondent Nos.11 and 12 from respondent Nos.3 and 4 is not denied. The trial Court, in the impugned order, made an observation that the Court can allow the petitions filed under Order I Rule 10 of CPC at any stage of the proceedings. The trial Court has not considered whether the proposed parties-respondent Nos.11 and 12 are necessary or proper parties to the suit or not. The trial Court dismissed the petition as if there is technical defect in the petition. The trial Court has not pointed out the technical defect in the affidavit or the petition. The fact remains that respondent Nos.11 and 12 have purchased 'A' schedule property during the pendency of the suit. The apprehension of the petitioner is that the proposed parties may interfere with the suit schedule property taking advantage of the sale deeds dated 27.7.2016. The apprehension of the petitioner is supported by the material available on record. Without the presence of the proposed parties, it may not be possible for the trial Court to adjudicate the matter effectively. Viewed from any angle, I am of the considered view that respondent Nos.11 and 12 are necessary and proper parties to the suit. The petitioner has satisfied the ingredients of

Order I Rule 10 of CPC. The trial Court has not considered the scope of Order I Rule 10 of CPC, in the light of the pleadings of both the parties and dismissed the petition on erroneous grounds. If the impugned order is allowed to stand, it would certainly amount to miscarriage of justice.

7. Taking into consideration the facts and circumstances of the case, this Court is of the considered view that it is a fit case to allow the revision.

8. In the result, the civil revision petition is allowed, setting aside the order dated 29.8.2017 passed in I.A. No.436 of 2017. Consequently, I.A.No.436 of 2017 in O.S.No.109 of 2010 on the file of II Additional Junior Civil Judge Court, Tadepalligudem, is allowed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this revision petition shall stand closed.

Date: 20.12.2018
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T.SUNIL CHOWDARY, J