

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.1177 of 2018

ORDER:

This revision petition is filed under Article 227 of the Constitution of India assailing the orders dated 27.10.2017 passed in I.A.No.1523 of 2017 in O.S.No.537 of 2015 on the file of the Court of Principal Senior Civil Judge, Kadapa.

2. Heard the learned counsel for the petitioner and perused the material available on record.

3. The parties will be hereinafter referred to as they were arrayed before the trial Court to avoid confusion.

4. The facts leading to filing of the present revision are, briefly, as follows: Plaintiff filed O.S.No.231 of 2005 on the file of Senior Civil Judge, Kadapa against the second respondent for recovery of arrears of rent from 17.04.2003 to 17.09.2005 in respect of suit schedule property. The said suit O.S.No.231 of 2005 was decreed in favour of the plaintiff (first respondent) and against the second respondent on 20.06.2007. The General Power of Attorney holder of plaintiff filed O.S.No.49 of 2009 against the second respondent for recovery of arrears of rent from 15.02.2006 to 15.02.2009 and the same was dismissed for default on 28.04.2009. The plaintiff also filed the present suit O.S.No.537 of 2015 against the second respondent for arrears of rent with effect from 01.01.2013 to 01.12.2015 at Rs.24,000/- per month. Pending suit, the petitioner and others have filed I.A.No.1523 of 2017 under Order I Rule 10 CPC to implead them in the main suit as defendant Nos.2 to 10 alleging that their father filed O.S.No.32 of 2004 against the first respondent herein for re-conveyance of the suit schedule property.

During pendency of the suit, the father of the petitioner died and the same was dismissed for non-prosecution. The petitioner herein and eight others have filed A.S.No.214 of 2016 on the file of this Court challenging the decree and judgment in O.S.No.32 of 2004. The first respondent filed counter alleging that the petition is not maintainable under law as he purchased the suit schedule property from K.Sirajuddin, who is father of the petitioner under a registered sale deed dated 17.04.2003. The trial Court after affording a reasonable opportunity to both parties, arrived at a conclusion that the petitioners are not necessary and proper parties to the suit and dismissed the same. Feeling aggrieved by the orders of the trial Court, the present revision is filed.

5. Learned counsel for the petitioner submitted that the petitioner and eight others being legal heirs of K.Sirajuddin are entitled to come on record as proposed defendants 2 to 10 and the same was not considered by the trial Court in right prospective. He further submitted that the trial Court failed to consider that the petitioner and eight others are necessary and proper parties to the suit in view of pendency of A.S.No.214 of 2016.

6. Now, the point that arises for consideration in this revision petition is, whether there is any illegality or irregularity in the orders passed by the trial Court, which warrants interference of this Court.

7. It is an admitted fact that the suit schedule property belongs to one K.Sirajuddin, who is the father of the petitioner herein. The said Sirajuddin sold the suit schedule property in favour of the 1st respondent/plaintiff under a registered sale deed dated 17.04.2003 and delivered the possession of the property to him. The 1st

respondent/plaintiff let out the suit schedule property to the second respondent. The 1st respondent/plaintiff filed O.S.No.231 of 2005 against the second respondent on the file of the Senior Civil Judge, Kadapa for recovery of arrears of rent from 17.04.2003 to 17.09.2005, which was decreed on 20.06.2007. The 1st respondent/plaintiff also filed O.S.No.49 of 2009 against the second respondent for recovery of arrears of rent from 15.02.2006 to 15.02.2009 @ Rs.14,000/- per month. The 1st respondent/plaintiff got issued a legal notice dated 07.11.2015 directing the second respondent to pay the arrears of rent from 01.01.2013 to 01.11.2015 @ Rs.24,000/- per month. For one reason or other, the second respondent did not choose to pay the arrears of rent. Having no other alternative, the 1st respondent/plaintiff filed the present suit O.S.No.537 of 2015 against second respondent on the file of the Principal Senior Civil Judge, Kadapa for recovery of arrears of rent with effect from 01.01.2013 to 01.12.2015 at the rate of Rs.24,000/- per month. Pending suit, the petitioners herein filed a petition under Order I Rule 10 CPC. It is not in dispute that the 1st respondent/plaintiff filed a suit in O.S.No.231 of 2005 against the second respondent, who is his tenant claiming arrears of rent with effect from 17.04.2003 to 17.09.2005 and the same was decreed on 20.06.2007. A perusal of the record *prima facie* reveals that the 1st respondent/plaintiff let out the suit schedule property to the second respondent. In view of the pendency of the suit between the 1st respondent/plaintiff and second respondent, this Court is not expressing any opinion with regard to the quantum of rent. Even as per the case of the petitioner, the first respondent

(plaintiff) purchased the suit schedule property from his father under a registered sale deed dated 17.04.2003. Unless and until the sale deed dated 17.04.2003 was set aside by a competent Court, the first respondent is the owner of the suit schedule property. It is not the case of the petitioner that the second respondent is their tenant. The *lis* involved in O.S.No.537 of 2015 is whether the first respondent is entitled to recover the arrears of rent from second respondent. The petitioner is claiming the suit schedule property as a legal heir of said Sirajuddin. If the petition is allowed, the Court has to decide whether the petitioner is the owner of the suit schedule property. If the petition is allowed, the very nature of the suit will be altered. The trial Court passed the impugned orders basing on the decisions reported in **Bandikatta Satyavathi v. Bandikatta Venkata Rao**¹ and **B.Somaiah v. Amina Begum**².

8. In **B.Somaiah vs. Amina Begum** (2 supra), this Court at Para 5 of the order held as follows:

5. Where a person applies to be made a party, what the Court ought to see is whether there is anything in the suit which cannot be determined owing to his absence or whether there will be prejudice by his not being added as a party. Order 1, Rule 10 cannot be read as requiring that all persons who are likely to have any sort of right, title or interest in respect of the subject-matter of a suit should be made parties to it. 'Questions involved in the suit' refer only to questions between the parties to the suit. They refer only questions as between the plaintiffs and the defendants and not to questions which may arise between a party to the suit and a third party. The procedure under Order 1, Rule 10 should always be adopted where it is really necessary for a complete adjudication upon the questions involved in the suit and to avoid multiplicity of proceedings. Order 1, Rule 10 cannot be resorted to where there is no need for adding new parties for adjudication upon the questions involved in the suit.

¹ 2000 Law Suit AP 834 = 2001(1) ALT 338

² AIR 1976 AP 182

9. In **Bandikatta Satyavathi Vs. Bandikatta Venkata Rao** (1 supra), this Court at para 6 of the order held as follows:

6. Keeping in view the fact that the only issue which would arise for consideration before the learned Judge was as to whether the defendant in the suit was liable to pay arrears of rent to the plaintiff-petitioner, the same could not have been directed to be converted into a suit for declaration of title and other consequential reliefs by and between the plaintiff and the third-party in relation where to, the defendant-respondent had not raised any question. The said question of title, therefore, is beyond the scope of the suit, and the third party-respondent was thus neither a necessary party nor a proper party.”

10. From the above decisions, the following principles can be deduced: (1) Petition under Order I Rule 10 of CPC is liable to be dismissed, if allowing of such petition leads to alteration of nature of the suit; (2) In a suit for recovery of arrears of rent, a third party is not entitled to come on record, taking aid of Order I Rule 10 of CPC; and (3) If the Court is able to adjudicate the *lis* involved in the suit even in the absence of the proposed party, petition under Order I Rule 10 of CPC cannot be allowed.

11. In the instant case, the Court can decide whether the plaintiff is entitled to recover the arrears of rent from the second respondent, even in the absence of the proposed parties. If the proposed parties are brought on record, the suit filed by the plaintiff for arrears of rent would be converted into a suit for declaration, which is not permissible under law. The petitioners have not satisfied the Court that the dismissal of the petition under Order I Rule 10 of CPC leads to multiplicity of proceedings. Viewed from any angle, the proposed parties are not necessary and proper parties to the suit. The trial Court considered the factual and legal aspects in right perspective and dismissed the petition. I am fully endorsing the findings recorded by the trial Court.

12. Taking into consideration the facts and circumstances of the case, I am of the considered view that there is no illegality or irregularity in the orders passed by the trial Court, which warrants interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India. The revision petition lacks merits and *bona fides* and the same is liable to be dismissed.

13. Accordingly, Civil Revision Petition is dismissed at the stage of admission. As a sequel, the miscellaneous petitions, pending if any in this revision, shall stand closed.

April 6, 2018
Rns

T.SUNIL CHOWDARY, J

