

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

and

THE HON'BLE SRI JUSTICE T. AMARNATH GOUD

C.M.A.No.1032 of 2017 and C.R.P.No.5039 of 2017

Between:

Smt. Tara Devi Toshniwal, W/o Tejprakash Toshniwal,
Aged about 54 years, Occ: Housewife, R/o 4-1-6/B/4,
Ramkoti, St.No.6, Tilak Road, Hyderabad and 12 others

... Appellants

Vs.

M. Shallender, S/o M. Govind Laxman, aged about 45
Years, Occ: Auto Driver, R/o 5-4-522/1, Old Kattal
Mandi, Nampally, Station Road, Hyderabad and 3 others

.. Respondents

For Appellant : Mr. Bankatlal Mandhani

For Respondents : Mr. V. Subramanyam

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE T. AMARNATH GOUD

C.M.A.No.1032 of 2017 and C.R.P.No.5039 of 2017

COMMON JUDGMENT: (V. Ramasubramanian, J)

Aggrieved by the refusal of the Court below to set aside an *ex parte* decree and also to implead them as parties to the suit, the third parties to the suit have come up with the above Civil Miscellaneous Appeal and the Civil Revision Petition.

2. Heard Mr. Bankatlal Mandhani, learned counsel for the appellants/revision petitioners and Mr. V. Subramanyam, learned counsel for the respondents 1 to 3, who are the plaintiffs in the suit.

3. The respondents 1 to 3 herein filed a suit in O.S.No.354 of 2010 on the file of the Court of the Chief Judge, City Civil Court, Hyderabad, seeking a declaration that they are the absolute owners of the plaint schedule property. The 4th respondent herein was impleaded as the sole defendant in the suit. The 4th respondent remained *ex parte* in the suit, resulting in an *ex parte* decree being passed on 30-09-2011 in O.S.No.354 of 2010.

4. Though there is nothing to be executed in a decree for declaration, it appears that steps were taken by the respondents 1 to 3, forcing the present appellants/revision petitioners to go before the trial Court with two applications, one under Order IX Rule 13 of the Code of Civil Procedure and another under Order I Rule 10 of the Code of Civil Procedure. Both these applications were dismissed by the trial Court, forcing the appellants/revision petitioners to come up

with the above appeal and the revision, the appeal being against the order refusing to set aside the *ex parte* decree and the revision being against the order refusing to allow the petitioners to be impleaded in the suit.

5. As rightly observed by the trial Court, the suit filed by the respondents 1 to 3 herein as against the 4th respondent was a mere suit for declaration of title without any consequential prayer. Such a decree is binding only upon the 4th respondent and not upon anybody else, who sets up independent title upon themselves. Therefore, it is not even necessary for the appellants/revision petitioners to seek to set aside the *ex parte* decree, since the decree is not binding on them.

6. If at all the respondents 1 to 3 seek to do anything on the basis of the decree, the appellants/petitioners should work out their remedies independently. It appears that the petitioners have also taken such steps and they may have to prosecute only those steps.

Therefore, we find nothing wrong in the order of the trial Court. Hence, the Civil Miscellaneous Appeal and the Civil Revision Petition are dismissed. It will be open to the appellants/revision petitioners to prosecute other remedies.

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

V. RAMASUBRAMANIAN, J

T. AMARNATH GOUD, J

Date: 31-01-2018
Ksn