

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.3997 of 2017

ORDER:

1 This Civil Revision Petition is filed under Article 227 of the Constitution of India, assailing the order dated 27.04.2017 passed in I.A.No.121 of 2016 in O.S.No.11 of 2013 on the file of the Court of the Senior Civil Judge, Sircilla.

2 Heard the learned counsel for both parties.

3 A perusal of the record reveals that first respondent filed O.S.No.11 of 2013 on the file of the Court of the Senior Civil Judge, Sircilla against the respondent Nos.2 to 5 for partition of the suit schedule property into three equal shares and to allot one such share to the first respondent.

4 Second respondent is grandfather of the first respondent, third respondent is father of the first respondent, respondent Nos.4 and 5 are purchasers. Petitioners who are daughters of the second respondent, filed a petition under Order I Rule 10 CPC seeking to implead them as necessary and proper parties to the suit. None of the respondents filed counter before the trial court opposing the said petition. The trial court dismissed the petition on the sole ground that the petitioners failed to prove that they are the natural daughters of the second respondent. Hence, the present revision petition.

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

Whether there is any illegality, irregularity or impropriety in the impugned order, warranting interference of this Court?

Point:

6 It is not the case of the respondents that the petitioners are not daughters of the second respondent. In a suit for partition, all the joint family members are necessary and proper parties, without whose

presence, the suit cannot be adjudicated effectively. The trial court has not dismissed the petition on the ground that they are not necessary and proper parties to the suit. The trial court made an observation that if really the petitioners are the natural daughters of the second respondent, they might be aware of the pendency of the suit. The observations made by the trial court are based on assumptions and presumptions. The trial court has not considered whether the proposed parties are necessary and proper parties to the suit. As observed earlier, all the joint family members are necessary and proper parties in a suit for partition. The trial court lost sight of this aspect and dismissed the petition on erroneous grounds. If the order passed by the trial court is allowed to stand, certainly, it would amount to miscarriage of justice. Viewed from factual or legal aspects, the order passed by the trial court is not sustainable. Having regard to the facts and circumstances of the case, this court is of the considered view that the proposed parties are necessary and proper parties to the suit. Hence the petition deserves to be allowed.

7 In the result, the Civil Revision Petition is allowed, setting aside the order dated 27.04.2017 passed in I.A.No.121 of 2016 in O.S.No.11 of 2013 on the file of the Court of the Senior Civil Judge, Sircilla. Consequently I.A.No.121 of 2016 stands allowed, permitting the petitioners to come on record as defendant Nos.5 and 6 in the suit. No order as to costs. As a sequel, miscellaneous petitions, if any connected to this Civil Revision Petition, shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 23rd November, 2018
Kvsn