

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 1839 of 2018

ORDER:

1) The present Civil Revision Petition is filed under Article 227 of the Constitution of India, challenging the order dated 12.02.2018, passed in I.A.No.139 of 2018 in O.S.No.60 of 2011 on the file of the VI Additional District Judge, Kakinada, wherein the request of the petitioner/proposed party to come on record as third plaintiff is rejected.

2) The facts in issue are as under:

Respondent Nos.1 and 2 herein, who are the plaintiffs, filed O.S.No.60 of 2011 seeking the following reliefs:

- a) preliminary decree for partition of the plaint schedule properties into five equal and equitable shares according to good and bad qualities and for allotment of one such share to each of the plaintiffs; nd
- b) thereafter appoint a Commissioner for the partition of the plaint schedule property as per the preliminary decree by mets and bunds;
- c) pass a final decree for the separate share of the plaintiffs;

- d) pass a decree for separate possession of the share allotted to the plaintiffs;
- e) direct the defendants to furnish true, proper and correct account of the income and expenditure on the plaint schedule properties, if necessary by appointing a Commissioner;
- f) pass a decree for recovery of the amount due to the plaintiffs;
- g) award future profits; and
- h) award costs.

A written statement came to be filed by the defendants disputing the averments in the plaint. Seven years after the institution of the suit, the petitioner herein, who is third party to the proceedings, filed I.A.No.139 of 2018 claiming a fraction of 'B' schedule property as it was sold away by the plaintiffs to her by way of registered sale deed dated 26.03.2013 vide document No.1461 of 2013. It is stated that symbolic possession of the same was given and since then they have joint and undivided interest therein.

It is to be noted that the petitioner, who is a third party to the proceedings, is very closely related to the plaintiffs and defendants. It is further stated in the affidavit that since the property purchased by the petitioner is the erstwhile family property, coming from the source of her deceased junior paternal uncle, Nakka Subbaraju and as

the plaintiffs are about to liquidate their share on account of their necessities, the petitioner is said to have purchased the same to retain by herself as she happens to hail from the family of Nakka people and also out of her personal interest. It is further stated in the petition that only a fraction of 'B' schedule property was purchased, as such she intends to fight the litigation, being a party to the above suit.

3) A counter came to be filed opposing the same. It is the case of the respondents that recently the plaintiffs filed an amendment petition vide I.A.No.33 of 2018 seeking amendment of the plaint and correction of survey numbers, which was dismissed on 05.02.2018. Defendant No.10 also filed some A.T.C. cases against the respondents herein with a view to grab the entire property of late Nakka Satya Narayana Murthy. It is also stated that if the petitioner is allowed to come on record as one of the plaintiffs, the nature of pleadings would get vitiated and great prejudice would be caused to the respondents.

4) Considering the rival submissions made, the trial Court rejected the request setting out reasons as to why such application cannot be ordered. Challenging the same the present revision came to be filed.

5) From the narration of events in the affidavit filed in support of the petition, it is clear that the proposed party is very very closely related not only to the plaintiffs but also to the defendants. She said to have purchased a fraction of plaint 'B' schedule property from the plaintiff, who were selling away their share of the properties. Since the suit is filed by the plaintiffs seeking division of the properties, it is to be inferred that their share and rights over the property are not yet determined and the trial Court in the said suit has to decide as to which portion of the property would fall to the share of the plaintiffs. Being a member of the said family, it cannot be said that the petitioner herein has no knowledge about the suit, at the time of purchasing the said property. In fact it was not even averred in the application that she was not aware about the litigation at the time of purchase of the property. The record further discloses that the suit is of the year 2011 and when the trial in the said suit was about to commence, the plaintiffs filed an application for amendment of plaintiff and correction of survey numbers on the ground that the counsel noticed the said mistake at that point of time. The said petition was dismissed on 05.02.2018. On the very same day, the present I.A. came to be filed by the petitioner/ third party through the very same counsel for impleading her as a party to the

main suit, which was filed in the year 2011. It is also to be noted here that the petitioner is said to have purchased the property in the year 2013 and no reasons are forthcoming as to why she kept quiet for nearly five years thereafter without getting herself to implead as a party, when it is not her case that she was not aware about the litigation which was initiated in the year 2011. In view of all these circumstances the petitioner cannot be permitted to come on record as one of the plaintiffs and object to the partition of the property. Since the petitioner is a very close relatives of the plaintiffs and also to the defendants and in the absence of any plea, pleading ignorance of legal proceedings and as the rights of the plaintiffs themselves with regard to share in the property are not yet determined, I see no ground to accept the request of the petitioner to come on record as one of the plaintiffs at this stage.

6) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

03.08.2018
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