

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.4824 OF 2017

ORDER:

This civil revision petition, under Article 227 of the Constitution Of India, is filed challenging the order dated 10.06.2017 in I.A. No.14 of 2014 in F.C.O.P. No.280 of 2012 passed by the Judge, Family Court, City Civil Court, Secunderabad, whereby the learned Judge dismissed the petition filed under Rule 10(2) of Order I of the Code of Civil Procedure, 1908 (for short 'CPC'), to implead the proposed respondent as second respondent in the main petition.

It is the case of the petitioner that the first respondent allegedly sold the property to the proposed second respondent by executing registered sale deed bearing document No.5150 of 2012 dt.05.11.2012 and received entire sale consideration i.e., Rs.30,00,000/- from the proposed second respondent, though the value of the property is more than Rs.60,00,000/-. It is further contended that during pendency of I.A. No.749 of 2012 filed for temporary injunction and to avoid payment of maintenance in the FCOP, in case the FCOP is allowed, the first respondent resorted to sale of property. Therefore, the purchaser is the proper and necessary party to the main petition and sought for impleadment of the proposed party as second respondent in the F.C.O.P.

The first respondent filed counter denying the material allegations *inter alia* contending that the proposed party is a bonafide purchaser for valuable sale consideration and is neither proper nor necessary party to decide the real issue under Section 18 of the Hindu Adoption and Maintenance Act (for short 'the Act) and prayed for dismissal of the petition.

Upon hearing argument of both the counsel, the court below recorded a finding that unless there is an injunction restraining the alienation of the property against the first respondent in the FCOP, the sale of the property cannot be faulted and the purchaser is not proper and necessary party to the F.C.O.P. and dismissed the petition.

Aggrieved thereby, the present revision is filed raising several contentions, almost reiterating the contentions urged before the court below. The main endeavour of the counsel for the petitioner is that in case the property is allowed to be sold, it is difficult for her to realize the maintenance amount to be awarded together with arrears and therefore, she sought for impleadment of the proposed party as second respondent in the F.C.O.P.

During hearing, Smt.D.Pramada, learned counsel for the petitioner, would contend that in the absence of the second respondent, the claim of the petitioner cannot be decided and, therefore, for effective adjudication of her claim, the second respondent is necessary party to the proceedings; she further contended that alienation is only intended to avoid payment of maintenance to the petitioner and she will be deprived to claim recovery of maintenance, if the second respondent is not impleaded to the F.C.O.P. and prayed to set aside the order passed by the court below and allow the I.A. while impleading the second respondent as proper and necessary party to the F.C.O.P.

Whereas Sri M.V.Subba Reddy, learned counsel for the first respondent, would contend that the purchaser is neither proper nor necessary party to the proceedings under Section 18 of the Act to

claim maintenance on the ground that the petitioner was neglected and totally abandoned by the first respondent. In such case, for deciding the maintenance payable by the first respondent, proposed party cannot be impleaded in proceedings under Section 18(1) of the Act and supported the order passed by the court below in all respects and prayed for dismissal of the revision.

It is an undisputed fact that the petitioner filed the F.C.O.P. under Section 18(1) of the Act, which permits the court to award maintenance to the wife who was deserted by the husband and according to clause(2) of the Act, a Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance – (a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or willfully neglecting her; (b) if has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injuries to live with her husband; (c) if he is suffering from a virulent form of leprosy; (d) if he has any other wife living; (e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere; (f) if he has ceased to be a Hindu by conversion to another religion; (g) if there is any other cause justifying living separately and according to clause (3) of Section 18 of the Act, a Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

Therefore, the dispute is only between the first respondent and the petitioner. Obviously, the dispute is purely personal and the court is required to decide the reason for her separate living based on

sub-section (2) of Section 18 of the Act. While deciding such issue, the purchaser/ proposed party herein is neither proper nor necessary party to the proceedings pending before the Judge, Family Court, it can be decided even without his presence in the main O.P. It appears from the record that the petitioner apprehending that it is difficult for her to realize the decree, if any, passed in her favour, if the proposed party/second respondent is not allowed to implead as a party to the petition. When the petitioner is claiming maintenance against her husband, presence of third party is totally irrelevant and unnecessary, as she has no claim and not even his presence is necessary for effectual and final decision on the issue before the court. Therefore, the trial court rightly recorded the finding that the proposed party is neither proper nor necessary party to the F.C.O.P. filed under Section 18 of the Act.

It is the contention of the petitioner that in case the proposed party is not impleaded, it is difficult for her to realize the decree debt that may be passed in her favour.

As seen from the F.C.O.P., she did not claim any charge over the property to attract Section 39 of the Transfer of Property Act 1882 and she is not entitled to claim any statutory charge against the property. It is an admitted fact that no attachment before judgment was affected under Rule 5 of Order XXXVIII of CPC and no injunction was obtained by the petitioner during pendency of the F.C.O.P. When no attachment before judgment was subsisting and no interim injunction was in force, it is difficult for this Court to conclude that alienation of the property is only intended to avoid payment of maintenance in favour of the petitioner under decree that may be

passed in her favour. If she entitles to claim maintenance, she can proceed to realise the debt by any other modes of execution of decree permitted under the provisions of CPC, but she cannot implead the proposed party against whom she has no claim in the F.C.O.P. filed under Section 18 of the Act, since the dispute is purely personal in nature between the petitioner and the first respondent.

Hence, the trial court rightly declined to implead the second respondent and it does not warrant interference in view of the limited power of this Court under Article 227 of the Constitution of India and this Court cannot reassess or revise the evidence to come an independent conclusion in view of the law declared by the Apex Court in **Raj Kumar Bhatia v. Subhash Chander Bhatia**¹.

In view of my foregoing discussion, I find no ground to interfere with the order passed by the court below, consequently the petition is deserves to be dismissed.

In the result, the civil revision petition is dismissed without costs in the circumstances of the case.

Consequently, miscellaneous petitions, if any, pending shall stand closed.

M.SATYANARAYANA MURTHY, J

Date:15.03.2018
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¹ (2018) 2 SCC 87