

CIVIL REVISION PETITION No.2070 of 2018

ORDER:

This revision is filed by the petitioner/plaintiff, aggrieved by the order dated 23.02.2018 in I.A.No.38 of 2018 in O.S.No.334 of 2017 passed by the Principal Junior Civil Judge, Kandukur.

2. Heard the learned counsel for the petitioner before ordering notice to the respondents.

3. There are 19 respondents, of whom, the proposed parties to the suit permitted by the Court by the impugned order in I.A.No.38 of 2018 in the pending suit for prohibitory injunction of the sole plaintiff/revision petitioner are revision respondents 1 and 2, represented by their mother, Smt.P.Tulasi, and their father is alive but at abroad.

4. The minors paternal grand father is the plaintiff. It appears the relationship between the minors parents are in strain and the minors are with the mother. The suit filed originally against 17 defendants, of whom, the minor petitioner's mother by name, P.Tulasi is defendant No.1 (plaintiff's daughter-in-law). In the pending suit, she by representing the minors, filed a petition for impleadment of the two minors, aged eight years and five or six years respectively. The present revision is filed impugning the impleadment of them as defendants 18 and 19.

5. The contentions in the grounds of revision mainly are that the minors so called next friend-cum-mother is not the natural

guardian, more particularly, Section 6 of the Hindu Minority and Guardianship Act, 1956 (for short 'H.M.G.Act'), for the father is alive and also from the fact that as per Section 12 of the H.M.G.Act, no guardian can be appointed for the minor's undivided interest in joint family property, if it is under the management of an adult member of the family, provided that nothing in this section shall be deemed to affect the jurisdiction of a High Court to appoint a guardian in respect of such interest, for the order is passed by the trial Court and not by the High Court in its exercise of jurisdiction by virtue of provision of Section 12 of the H.M.G.Act and the other contention is that the minors are no way necessary parties to come on record in the suit, that too, when the minors' mother as defendant No.1 is contesting the suit for prohibitory injunction though the suit properties are undisputedly the coparcenary and joint family properties governed by the provisions of the Act 39 of 2005.

6. In view of the above said contentions, the revision can be disposed of, without need of ordering notice to the respondents for the following reasons:

7. Undisputedly, there is no appointment of a guardian for any joint family property invoking Section 12 of the H.M.G.Act supra, thereby, Section 12 of the H.M.G.Act has no application to the facts herein. The Apex Court, way back in 1999, laid down in *Githa Hariharan v. Reserve Bank of India*¹ in interpreting the

¹ [(1999) 2 SCC 228]

scope of the wording of Section 6 of the Act 'after him', preceded by the words the natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property) are, in the case of a boy or an unmarried girl-the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother. It is laid down that when the father even alive, not taking charge of the affairs of the minors, the mother can act as natural guardian. Once such is the case, there is no prohibition for the mother even to act as a natural guardian, when the minors are with the mother. Here, it is not as referred supra from Section 12 r/w Section 6 of the H.M.G. Act of any property guardian or personal guardian appointed by any Court. It is, undisputedly, the father of the minors is at abroad.

8. Even that difficulty does not arise, from appointment of a guardian and a person acts as natural guardian are entirely different of the minors person and property to maintain any claim or defend any claim on behalf of the minors by any person by acting as a next friend, that is contemplated by part of the procedural or adjective law under Order 32 C.P.C.

9. In the facts, from the father is not in India and is at abroad and the minors are with the mother and from the very wording of Section 6 of the H.M.G. Act supra, the mother is otherwise can act as a natural guardian, no way barred by law, to file an application

on behalf of minors by representing as a next friend to implead minors also as co-defendants to the suit, thereby, the technical argument on maintainability of the very petition, for the above reasons, is rejected.

10. Now coming to the merits as to whether the trial Court's order impleading the two minors represented by their mother as a next friend as defendants 18 and 19 to the suit is sustainable within the scope of Order 1 Rule 10 C.P.C?

11. Undisputedly, the suit is maintained against 17 defendants by the minors' grandfather, which includes minors' mother as defendant No.1. Minors got undivided interest in the property, which is part of the coparcenary property. Once, the mother of the minors, being a party can herself defend, also wants to defend on behalf of the minors. The only thing to be considered is, whether they are either necessary or at least proper parties to the suit. The scope of the revision is limited on interference once the order is otherwise sustainable. Necessary party is one as contemplated by the very wording of Order I Rules 9 and 13 C.P.C. of without his presence, the suit cannot be disposed of. Whereas, proper party is one without his presence, the suit is otherwise can be disposed of, for effective disposal, the persons presence can be considered. Here, the minors are no way necessary parties to the suit undisputedly. However, once they are proper parties and what the defence the mother of minors can raise also as next friend for the minors can raise, it will not

change any defence even, thereby they are atleast proper parties to the suit. Once such is the case, there is nothing to interfere with the impugned order of the lower Court. Needless to say, the suit is for bare injunction. The contest is to oppose the entitlement of the relief and once it is the burden of proof lies on the plaintiff, it is for him to establish and so far as the minors interest undivided in the hands of the grandfather concerned, a grandfather is entitled, no doubt, to manage the properties but for to render accounts, leave about the right of the minors if at all to maintain a suit for partition and for that matter even the grandfather or the father of the minors or the father's sisters of the minors can maintain a suit for partition, if at all any of them chooses. Thereby, in disposal of the revision, the scope is entirely different to the above and thus this Court further need not go into.

12. Accordingly, the Civil Revision Petition is dismissed before admission, without prejudice to the contest of both parties in the suit for injunction, though the minor children having citizenship of the Country, Germany, it makes no difference.

13. Consequently, miscellaneous petitions, if any shall stand closed. No order as to costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 02.04.2018

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