

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CIVIL REVISION PETITION No.3324 OF 2018

ORDER :

This Civil Revision Petition is filed against order dated 14.02.2018 in E.A.No.391 of 2010 in E.A.No.467 of 2005 in EP No.110 of 2005 in O.S.No.271 of 1982, wherein and whereby the application filed by the 1st respondent/proposed party under Order 1 Rule 10 r/w Section 141 CPC for impleading him as 8th respondent in EA No.467 of 2005 is allowed.

2. Heard Sri Y.Ramathirtha, learned counsel for the petitioner and Smt. Nimmagada Revathi, learned counsel for the 1st respondent herein.

3. Learned counsel for the petitioner submits that the 1st respondent has no *locus standi* to be impleaded as 8th respondent in EA No.467 of 2005 filed by the petitioner under Order 21 Rule 58 of CPC in E.P No.110 of 2005, since he purchased the suit schedule property from the decree holders pending EP. He submits that the sale deed, basing on which he claims to come on record, there is a clause that decree holder shall obtain possession of the EP schedule property through Court and handover the same to the 1st respondent, as such, the 1st respondent cannot come on record independently, as he has to obtain the same through decree holder. He further submits that the 1st respondent purchased EP schedule property on 28.12.2006, during pendency of EP. He further submits that EA No.467 of 2005 is dismissed, as such, he filed restoration in the

aforesaid EA and the same is pending, as such, this Revision Petition is maintainable. In support of his contention, she relied on the judgments reported in **G.Ramegowda v. The Special Land Acquisition Officer, Bangalore**¹.

4. On the other hand, Smt.Nimmagadda Revathi, learned counsel for the 1st respondent submits that as per Order 21 Rule 58(2) of CPC, all questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit. She further submits that the 1st respondent purchased the suit schedule property from the 1st decree holder through registered sale deed dated 28.12.2006 and claiming through him. In order to avoid multiplicity of litigation, it is in the interest of parties that the dispute be resolved in the proceedings Order 21 Rule 58 (2) CPC. She also submits that the petitioner has already been impleaded in the main E.P 110 of 2005. She submits that EA No.467 of 2005 is already dismissed on 30.04.2018 and without disclosing the same, the present CRP is filed on 22.04.2018. In support of her contention, she relied on the judgment reported in **S.Sudhakar and another v. Syed Kareem**².

5. In this case, admittedly, the 1st respondent is a party in the main EP No.110 of 2005 and he claims EP schedule property

¹ AIR 1988 Supreme Court 897

² 2017 (2) ALD 1

by way of registered sale deed dated 28.12.2006. In order to resolve the issue involved in this case, it is necessary to extract Order XXI Rule 58 (2) of CPC, which reads as follows:

“58.Adjudication of claims to, or objections to attachment of property: (1)....

(2) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.”

The aforesaid provision brought/inserted by virtue of Amendment Act, 1976 for the purpose of avoiding multiplicity of litigation. Since the 1st respondent is claiming EP schedule property through decree holders by virtue of registered sale deed executed by the 1st decree holder, petitioner's rights can be decided under Order 21 Rule 58 (2) of CPC and same has to be tried like that of civil suit. Even appeal is provided under Section 96 of CPC and Second Appeal is also maintainable under Section 100 of CPC as held by the Hon'ble Full Bench in the judgment reported in **Gurram Seetharam Reddy v. Gunti Yashoda**³. The right, title and interest of the parties to can be decided after full fledged trial to avoid multiplicity of litigation and in fact, no separate suit is maintainable. The trial court also found that the petitioner had knowledge about impleadment of 1st respondent as legal representative of the deceased-1st decree holder. The claim petition itself should have been amended by the claim petitioner by adding the 1st respondent as one of the respondent. The executing court/trial court also found that the validity of the sale

³ 2004 (6) ALD 175 (FB)

deed dated 28.12.2006 can be decided at the conclusion of claim petition. The trial court also found that Decree-holders 2 to 4 or any one have not preferred any revision against order dated 25.08.2008 in EA No.314 of 2007, wherein the 1st respondent was impleaded in the main EP, as such, order dated 25.08.2008 in EA No.314 of 2007 has become final.

In **S.Sudhakar and another v. Syed Kareem** (supra), this Court held as follows:

“29. The object of transposition of parties is to facilitate determination of *lis* between the parties and such power is exercised to further the cause of administration of justice, avoid multiplicity of proceedings and dismissing the suits on technical grounds. The refusal of prayer for transposition on technical grounds in the considered view of this Court defeats the object and scheme of [Section 2\(11\)](#), Order I Rule 10 and Order XXII Rules 1 and 10 of CPC. The principles of law laid down in the decision referred to above are to the effect that in a suit for partition, the position of parties is interchangeable. Order XXII Rule 10 provides for impleading a purchaser to come on record and continue or defend the suit. Once a purchaser is on record, the demise of purchaser's vendor does not automatically result in abatement, because the purchaser fits into the definition of an LR under Section 2(11) of CPC and is already on record.”

The trial Court only ordered impleadment of 1st respondent and the merit or otherwise of the case, at the stage of enquiry cannot be conducted, but it is always open for the petitioner to raise all these contentions before the executing Court and in fact the trial court also observed that the claim of the 1st respondent that he has purchased by way of registered sale deed has to be gone into in the enquiry.

In view of facts and circumstances, I do not see any infirmity or illegality in the order passed by the trial Court.

Accordingly, the Civil Revision Petition is dismissed. Interim stay granted on 09.07.2018, which was extended from

time to time, shall stands vacated. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand dismissed.

A.RAJASHEKER REDDY, J

12.09.2018
kvs



HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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