

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

C.R.P.NO.94 OF 2015

ORDER:-

This revision petition is filed questioning the return of an application.

2. The unnumbered application under Section 47 of CPC is filed in a pending suit and in I.A.No.366 of 2014 in O.S.No.131 of 2005 on the file of the court of Junior Civil Judge, Jagtial.

3. O.S.No.131 of 2005 is a suit for partition and for other reliefs. A preliminary decree was passed on 22-02-2012 and final decree proceedings are pending. At that stage, this application is filed under Section 47 CPC by the petitioner who claims to have purchased the property from one of the sharers. The court below returned the application on two grounds:- (1) that it is filed under Section 47 CPC which relates to the execution, discharge or satisfaction of the decree; and (2) a similar relief was already claimed by the petitioner in an earlier I.A which has been filed and dismissed. The learned counsel for the petitioner submits that when the matter was returned, he requested that the matter should be heard at the Bench. Instead of doing so, the court returned the case. Questioning the same, the present revision petition is filed.

4. This court has heard Sri G.Madhusudhan Reddy, learned counsel for the petitioner and Sri Mahboob Hussain,

learned counsel for the respondents except the 2nd respondent who has died and the cover was returned in 2015 itself.

5. The contention of the learned counsel for the petitioner is that the court committed an error in not hearing the matter at Bench. In addition, he submits that as the petitioner has purchased the property from one of the sharers, he should be added as a party to the proceedings and that the lower court committed an error in not adding the petitioner. He also contends that hearing was not given to him and that there was a denial of opportunity. He also relies upon two judgments in *Mumbai International Airport Pvt. Ltd., vs. Regency Convention Centre & Hotels Pvt. Ltd., and another*⁽¹⁾ and *Pallapu Mohanarao(died) by LRs vs. Thammisetty Subba Rao and others*⁽²⁾. It is his submission that lower court committed a fundamental error in procedure. According to him, the matter should have been called at the Bench and I.A should have been numbered.

6. In reply thereto, the learned counsel for the respondents submits that the suit is not yet decreed. Only a preliminary decree is passed. Therefore, Section 47 CPC is not at all applicable according to the learned counsel. In addition, he points out that I.A.No.81 of 2011 was filed by

¹ 2010(5) ALD 24 (SC)

² 2011(6) ALD 324

the very same petitioner in the same suit i.e., O.S.No.131 of 2005 to implead himself as a party. That application was dismissed on 18-03-2011 and no revision is preferred against the said dismissal. Therefore, the learned counsel submits that the same petitioner cannot again seek to join the present suit. He, therefore, submits that no error was committed by the court below and the application is not maintainable in at all. He also points out that when the matter was returned, proper representation was not made and, therefore, the court returned the application.

7. This court, after hearing both the learned counsel, notices that Section 47 CPC deals with the question to be determined by a court "executing the decree". All the questions arising between the parties to the suit or their representatives and relating to execution, discharge and satisfaction of the decree shall be determined by the court executing a decree and by no other court. In the case on hand, the suit has not been decreed at all. A preliminary decree was passed. It merely determines the rights of the parties and final decree would deal with the actual apportionment of the property. Thereafter if there is any need, execution will be carried out. Therefore, Section 47 CPC is clearly not applicable to the facts of the present case and the petitioner cannot contend that he is a

representative and that his rights have to be determined under Section 47 CPC.

8. In addition I.A.No.81 of 2011 was filed by the very same petitioner in the suit seeking impleadment on the basis of the same sale deeds now referred in this application (DVC No.3771 and 3772 of 205). That application was dismissed on 18-03-2011 and that order has attained finality. Therefore, this court is of the opinion that principles of *res judicata*, which are held to be applicable even in different stages of the same suit, would squarely applicable to the facts of the present case. Another application under a different provision of law claiming the same relief is not maintainable. Even the case law cited by the learned counsel for the petitioner which are under Order I Rule 10 CPC are actually against him. In *Mumbai International Airport Pvt. Ltd(first supra)*, the Hon'ble Apex Court clearly reiterated the principles of law and held that a necessary party is one in whose absence no effective decree would be passed at all and if a necessary party is not impleaded, the suit has to be dismissed. In the case on hand, the petitioner does not satisfy the test of being a necessary party. In his absence also, the suit for partition can be decreed. Similarly in *Pallapu Mohanarao(2nd supra)*, the learned single judge of this court held that the question whether the individual is a proper and necessary

party would depend upon the nature of the relief claimed in the suit and the right claimed, but did not lay down as a matter of law that a purchaser is a necessary party in a suit for partition. Therefore, for all the above reasons, this court is of the opinion that the unnumbered application filed by the revision petitioner herein is misconceived and that he is not entitled to any relief what-so-ever.

Accordingly, the Civil Revision Petition is dismissed. No costs. Miscellaneous Petitions pending, if any, shall stand closed in consequence.

15-11-2018
TSNR



D.V.S.S.SOMAYAJULU,J