

HON'BLE Dr.JUSTICE B.SIVA SANKARA RAO

CRP Nos.5369,5847 and 5870 of 2015

COMMON ORDER

O.S.No.36 of 2006 is filed by one Manikonda Ravinder Reddy against his father M.Narasimha Reddy-D.1, two brothers-D.2 and D.3 and D.4 to D.6-the alienees from the D.1. Pending suit, the I.A.No.365 of 2015 is filed by one M.Arundhathi-daughter of D.1 for impleadment of her as one of the co-defendants to the suit. In fact, she already filed a suit O.S.No.26 of 2015 on the file of the Addl.District Judge, Ranga Reddy district, at Vikarabad for partition of the self-same properties covered by the present suit in O.S.No.36 of 2006 which is also one of the reasons in her seeking to implead as co-defendant to the present suit O.S.No.36 of 2006 and that implead petition was dismissed by order dated 26.10.2015 and the same is impugned herein vide CRP No.5369 of 2015.

2. The plaintiff in O.S.No.36 of 2006 filed I.A.Nos. 246 of 2012 and 324 of 2015. Originally there was an amendment sought of the plaint vide I.A.No.26 of 2012 and that was dismissed by trial Court against which revision maintained before the High Court in C.R.P.No.1894 of 2012 was allowed by orders dated 15.10.2014, permitting the amendment sought by the plaintiff subject to costs and also the filing of additional written statement if any by the defendants by giving an opportunity to both the parties to adduce further evidence if any. Here in I.A.No.246 of 2012, the plaintiff sought to adduce further evidence and the same was dismissed by docket order dt.05.09.2014 with the observation that already plaintiff's side two witnesses were examined and D.Ws. 1 to 5 were also examined and when the matter is at arguments stage, the plaintiff wants to examine some more witnesses

though his evidence was closed after giving due opportunity thereby cannot be permitted to fill up the lacuna after defendants' evidence was closed. I.A.No.324 of 2015 is filed by self-same plaintiff seeking to adduce evidence that was dismissed on 26.10.2015 with an observation that the plaintiff is not allowed to lead further evidence after adducing evidence by the defendants, however it will nullify the defendants' evidence already adduced and the petition filed only to drag on the matter and the similar petition in I.A.No.246 of 2012 was also ended in dismissal and thereby devoid of merits.

3. The plaintiff impugning the respective dismissal orders in I.A.No.246 of 2012 and 324 of 2015 maintained CRP No.5847 and 5870 of 2015 respectively. In fact, as contemplated by Order I Rules 10, 9 and 13 CPC though the plaintiff is *dominus litis* power of Court to implead any party at any stage is available to avoid multiplicity of proceedings and to subserve the ends of justice. In fact non-joinder of a necessary party is fatal to the very maintainability of the suit. The suit is filed in the year 2006. The claim for partition is with a claim that the properties are partible properties irrespective of the A.P.amended Act 13 of 1986 w.e.f. 05.09.1985 came into force, from the Central Act to the Hindu Succession Act by amended Act 39 of 2005 w.e.f. 09.09.2005, she is also when claims as coparcener being necessary party to the suit to cure the defect otherwise even for plaintiff could not even oppose and instead impleading when she voluntarily sought for impleadment, it is just to allow the application to implead her being not a proper but necessary party to the suit. Apart from the impleadment even after filing of preliminary decree to re-define the shares and mould the relief can be done in the final

decree petition vide decision in S.Sai Reddy Vs. S.Narayana Reddy¹ referring to the earlier expression of the Apex Court in Phoolchand Vs. Gopal Lal², Mangal Singh Vs. Rattno³ Prema Vs. Nanjegowda⁴ and Division Bench of this Court in Karumanchi Venkaiah Vs. State of Andhra Pradesh⁵

4. Accordingly and in the result:-

a) The CRP No.5369 of 2015 is allowed directing the lower Court to cause carry the amendment through the office, by left open the contention as to she is a coparcener or a shareholder under Section 16 of the Hindu Marriage Act or otherwise entitles to any right or not even as the case may be, for otherwise being a proper party, to adjudicate the claim in her presence, that too when she already maintained another suit No.26 of 2015 with a claim as coparcener and it is also thereby just and necessary to club O.S.No.26 of 2015 with the present suit O.S.No.36 of 2006 by permitting her to lead her evidence as plaintiff in O.S.No.26 of 2015 and one of the defendants in O.S.No.36 of 2006 by permitting the plaintiffs and defendants to adduce their further evidence in connection with that suit claim and in view of the same and to subserve the ends of justice, the suit O.S.No.26 of 2015 is withdrawn and transferred to the Addl.District Judge, Vikarabad where O.S.No.26 of 2015 is pending with a direction to club the suit O.S.No.26 of 2015 with the present suit part heard claim. The trial Court shall make every endeavour to dispose of the suits supra, preferably within six (6) months from the date of receipt of the order.

¹ (1991) 3 SCC 647

² AIR (1967) SC 1470

³ AIR 1967 SC 1786

⁴ (2011) (6) SCC 462

⁵ (2016) (6) ALD 618

b) The C.R.P.Nos.5847 and 5870 of 2015 are disposed of.

Consequently, miscellaneous petitions, if any, pending in these Civil Revision Petitions shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:02.01.2018
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