

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Civil Revision Petition Nos.3422 and 3423 of 2018

COMMON ORDER :

The plaintiff is the revision petitioner by name Muduri Kameshwar Rao in both the revisions. He maintained suit O.S.No.252 of 2016 for the relief of permanent injunction against two defendants S.Madhusudhan Rao/ 1st defendant/ D.1 and Kondeti Ankamma/ 2nd defendant/ D.2. The written statement contest of the defendants particularly of D.1 is that the plaint schedule property for which the relief of permanent injunction sought for belongs to his wife by name Laxmi. It is after the evidence of the D.1/ D.W.1 while coming for the defendants' further evidence, the petition I.A.No.43 of 2018 is filed by the plaintiff seeking impleadment of said S.Laxmi-wife of D.1 as D.3 in the suit and the said petition is dismissed by order dated 19.02.2018. Impugning the same, the C.R.P.No.3423 of 2018 is preferred.

The plaintiff also filed another petition I.A.No.42 of 2018 in seeking to re-open the matter and the same is also dismissed by order dated 19.02.2018 and impugning the same, the C.R.P.No.3422 of 2018 is preferred.

The re-opening of a matter is not practically required unless the matter is reserved for judgment from hearing of arguments as per the settled law. Thereby irrespective of dismissal of I.A.No.42 of 2018 in O.S.No.262 of 2015 on no grounds to re-open, there is no necessity of disposal of the revision because of the above observation thereby the revision (CRP No.3422 of 2018) is closed as that lower Court's dismissal order not coming in the way if at all there are merits to re-open suo-moto.

Now coming to the CRP No.3423 of 2018 filed against I.A.No.43 of 2018 dismissal order dt.19.02.2018 impleadment of D.3-wife of D.1 concerned, even notice taken and served including to advocate on record in lower Court, nobody represented, service held sufficient.

Heard the learned counsel for the petitioner/plaintiff and taken as heard the defendants' and the proposed party-wife of the 1st defendant.

Mere taking of a plea that the property belongs to third party is different from showing foundation in support of the plea for the Court to consider even at the instance of a party to implead the party. Undisputedly, it is only during the evidence of D.W.1-D.1, as can be seen from the record, the document marked as Ex.B.1 which shows the property of extent of 27 ankanas of house site-a demolished house Assessment No.492 in Sy.No.82 which shown standing in the name of the proposed party, no other than the wife of D.1-D.W.1. It is with no lapse of time as can be seen, the application for impleadment filed from that foundation.

No doubt, what the plaintiff specifically pleaded as interference by D.1 and D.2 and not by owner of the property that is the proposed party-D.3. However once the document is exhibited in showing the property belongs to wife of D.1 in the evidence of D.1, the question of D.1 taking custody of the document of the property of his wife once covered by implied consent, if at all there is an adverse finding with reference to Ex.B.1 from trial that will prejudice the rights of the wife of the D.1-owner of the property and otherwise any finding will operate as obiter against her, to say it will be prejudicial to her interest.

Thereby the trial Court might have even *suo-moto* of its own invoking Order-I Rule 10(2) CPC impleaded her as co-defendant to the suit.

Having regard to the above, the CRP No.3422 of 2018 is closed and the CRP No.3423 of 2018 is allowed by setting aside the dismissal order of the lower Court in I.A.No.43 of 2018, dated 19.02.2018 by allowing it with a direction to the trial Court to permit for the consequential amendment sought for within the meaning of Rule 28 of the Civil Rules of Practice in the cause title and other portions of plaint which is subject to costs of Rs.5,000/- (Rupees five thousand only) payable to the Army Welfare Fund by the plaintiff within one week from the date of receipt of order and file proof before the lower Court. Failing which the revision order ceases its force and the impugned order of the lower Courts hold good for all purposes without any further reference to the Court.

Miscellaneous petitions, if any, pending in these revisions, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 07.08.2018
b/ o.Vvr