

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.3561 of 2018

ORDER:

The revision petitioners are defendant Nos.1 and 2 in O.S.No.223 of 2011 on the file of the VI Additional District and Sessions Judge, Nellore. Respondent No.1 is the proposed second plaintiff. Respondent No.2 is the sole plaintiff. Respondent Nos.3 to 15 are defendant Nos.3 to 15 and their legal representatives for two of them died.

2. The revision is impugning the order in I.A.No.55 of 2018, dated 02.04.2018, allowing the application of the proposed plaintiff to come on record as second plaintiff.

3. The contentions of the revision petitioners are that the proposed party sought to be impleaded by the sole plaintiff in I.A.No.18 of 2018 and the same was ended in dismissal by order, dated 02.04.2018, self same date, with observation that the plaintiff, who sought impleadment of the proposed second plaintiff, did not file affidavit of the proposed second plaintiff. Thereby, once that application for impleadment is dismissed even it was at the instance of sole plaintiff to implead the proposed second plaintiff, the subsequent allowing of the application in I.A.No.55 of 2018 at the instance of the proposed second plaintiff is untenable.

4. The counsel for the plaintiff and the proposed plaintiff as respondent Nos.2 and 1 respectively submits that the earlier

application dismissed was for non-filing of the affidavit of the proposed plaintiff and not for any other ground on merits as to neither necessary nor proper party.

5. Heard Sri Y.Narasimhulu, learned counsel for the revision petitioners and Sri C.Subodh, learned counsel for the respondents and perused the impugned order with reference to the rival contentions supra.

6. From the very affidavit averments for impleadment as co-plaintiff covered by the present impugned order, it is stated that the proposed plaintiff gifted under an un-registered document, dated 09.03.2000, his share is the present schedule property, that fell to him in the partition, dated 10.08.1967, and that document was duly impounded by collection of stamp duty by the revenue authorities and as he already gifted even it was for want of registration not a complete transaction, under his moral obligation to see that the sole plaintiff is entitled to the property by virtue of his said gift, though otherwise not enforceable, he want to come on record. Even earlier dismissal order covered by I.A.No.18 of 2018, the proposed party did not chose to contest, much less oppose that petition, but for the defendants opposed. Even on the self same day one application is allowed and other is dismissed, the trial Court should have seen that if at all any affidavit of the proposed party required, for disposal of I.A.No.18 of 2018, the affidavit petition and I.A.No.55 of 2018 should have been treated as the same.

7. Having regard to the above, once it is the only thing to consider whether a proposed party is either necessary or proper party to be impleaded, though any party has no right to come on record and that too when the plaintiff even asks the Court got discretion if at all neither proper nor necessary party not to implead, here by virtue of the very facts when the property covered by plaint 'A' schedule is from the very proposed plaintiff says given under a oral gift and executed a document for want of registration title not conveyed and he wants to support for the property the sole plaintiff's suit, if he is not necessary atleast a proper party to the suit, thereby the impugned order no way requires interference and even dismissal of the similar application of plaintiff in I.A.No.18 of 2011 is not a bar for allowing I.A.No.55 of 2018 that too that dismissal order is a erroneous outcome.

8. Accordingly, the civil revision petition is dismissed.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

Dr. B. SIVA SANKARA RAO, J

6th July 2018.

mar