

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.3692 of 2018

ORDER

The Order dt. 09-03-2018 in I.A.No.361 of 2017 in O.S.No.145 of 2017 impleading the respondents as party defendants invoking provisions of Order 1 Rule 10 (2) r/w 151 of CPC is challenged in the present Revision Petition.

It is the case of the petitioners/plaintiffs that the suit came to be filed by the Plaintiffs against one G. Nagappa, seeking for declaration of their right over the land in Sy.No.233 over an extent of Ac.19.88 cents and further seeking delivery of possession to the plaintiffs. When the said suit is pending, the respondents herein filed application claiming themselves to be disciples of the said Nagappa and asserting that the land is the property of a Trust under the name and style of 'Gaddam Nagarya Trust'. In the affidavit filed in support of the Interlocutory Application, it was stated that they are the disciples and followers Gaddam Nagappa, who was running the Trust in the name of 'Sri Svarama Deekshitha Achala Gurupeetam' and they also claimed to be the members of the Trust. The plaintiffs have raised an objection that as per the provisions of the Trust Act, they are required to file an application invoking Section 34 of the Trust Act, to enable them to represent the Trust. Further, they also raised a contention that Section 73 of the Trust Act mandated a procedure for appointment of new trustees on death of the principal trustee. Without taking any such steps, the respondents herein cannot be

recognized as Trust Members and they have no cause of action to be impleaded.

The Court below passed a cryptic Order by allowing the application holding that as the respondents herein claimed to be the Trust Members and if they are not impleaded, they would be deprived of their right and no prejudice will be caused if they are impleaded. The reasoning adopted by the Court below does not satisfy the requirement of Order 1 Rule 10 (2) CPC, which require the Court is required to come to a positive conclusion that the proposed parties are proper and necessary parties and in the absence of the said persons, the dispute in the suit cannot be adjudicated upon effectually and completely. The Court below had failed to consider these aspects and further the objections raised by the petitioners/plaintiffs.

In those circumstances, this Civil Revision Petition is allowed remanding the matter to the Senior Civil Judge at Gadwal, for fresh disposal. The Court may bear in mind that the suit came to be filed against a sole defendant and in the absence of the plaintiffs brining the legal representatives of the sole defendant, the cause of action in the suit itself may not survive. These aspects are left open to be considered by the Court below.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

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CHALLA KODANDA RAM,J

Dt: 13-12-2018

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