

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.180 of 2017

ORDER:

This revision petition is filed under Article 227 of the Constitution of India assailing the orders dated 31.10.2016 passed in I.A.No.164 of 2016 in O.S.No.173 of 2007 on the file of Junior Civil Judge Court, Atmakur, SPSR Nellore District.

2. In spite of service of notice, none appeared on behalf of the respondents. Hence, this Court is inclined to pass orders on merits. Heard the learned counsel for the petitioner and perused the material available on record.

3. The point that arises for consideration is:

“Whether there is any illegality, irregularity or impropriety in the impugned order?”

4. A perusal of the record reveals that the petitioner filed O.S.No.173 of 2007 on the file of Junior Civil Judge Court, Atmakur, against respondents 2 and 3 for declaration and consequential perpetual injunction. After completion of evidence on both sides, the first respondent filed I.A.No.164 of 2016 under Order I Rule 10 CPC to implead him as defendant No.3 in the main suit. The petitioner filed counter *inter alia* contending that the first respondent is neither necessary nor proper party to the suit, therefore, the petition is liable to be dismissed. Basing on the material available on record, the trial Court arrived at a conclusion that the first respondent is necessary and proper party to the suit and consequently allowed the petition. Hence, the revision.

5. It is an admitted fact that the petitioner filed the suit for declaration and consequential perpetual injunction in respect of an extent of Ac.1.00 cts in Sy.No.1952 of Atmakur village of Nellore District. During pendency of the suit, the first respondent filed implead petition to implead him as third defendant in the suit. As per the averments made in the affidavit, the proposed party/first respondent is the owner of entire extent of Ac.2.25 cents in Sy.No.1952 of Atmakur village. The first respondent also filed O.S.No.71 of 2011 on the file of Senior Civil Judge Court, Kovvur, for perpetual injunction in respect of an extent of Ac.2.25 cents in Sy.No.1952 of Atmakur village. The suit schedule property in O.S.No.173 of 2007 is part and parcel of suit schedule property in O.S.No.71 of 2011. A perusal of the record reveals that the first respondent and the petitioner approached the revenue authorities in order to obtain pattadar pass books in respect of the suit schedule property in both the suits. Learned counsel for the petitioner strenuously submitted that the first respondent if at all has any right in the suit schedule property, ought to have filed a suit for declaration.

6. It is a settled principle of law that a person, who is having interest or semblance of interest in the subject matter of the suit is entitled to come on record by filing an application under Order I Rule 10 CPC. It is needless to say that the Court cannot adjudicate the matter without the presence of necessary and proper parties. For one reason or other, the petitioner filed the suit for declaration without impleading the first respondent, who is also claiming the suit schedule property. A perusal of the record *prima*

facie reveals that the first respondent is also claiming the suit schedule property as owner. If the trial Court is allowed to adjudicate the matter without the presence of the first respondent, certainly it would cause prejudice to his rights. Viewed from any angle, the first respondent is a necessary and proper party to the suit. In order to avoid multiplicity of litigation thereby to put an end to the litigation once for all, impleading of 1st respondent as defendant No.3 in the suit is inevitable. The trial Court considered the material on record in the light of Order I Rule 10 CPC and allowed the petition. The trial Court has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing with the findings recorded by the trial Court. There is no illegality, irregularity or impropriety in the orders of the trial Court warranting interference of this Court, while exercising the jurisdiction under Article 227 of the Constitution of India. Hence, the petition is liable to be dismissed.

7. In the result, the Civil Revision Petition is dismissed. There is no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Dt:24.12.2018
Rns

T.SUNIL CHOWDARY, J