

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P. No.4118 of 2018

O R D E R:

Heard Sri G.Ramesh Babu, Counsel for petitioner and Smt S.Parimeeta, Counsel for respondents 1 to 3.

2. This Revision is filed under Article 227 of the Constitution of India challenging the order dt.03.07.2018 in I.A.No.715 of 2015 in O.S.No.262 of 2005 of the Principal Junior Civil Judge, Punganur.

3. Petitioner herein is the plaintiff in the above suit. He filed the said suit for a Perpetual Injunction restraining the respondents from interfering with his peaceful possession and enjoyment of the plaint schedule properties.

4. Petitioner contends that there are two items of properties which are subject matter of the suit i.e., A-Schedule and B-Schedule; A-Schedule property was gifted to the petitioner by his mother under Registered Gift dt.27.06.2002; and B-Schedule property was bequeathed to petitioner's daughters and son by the mother of petitioner under a Registered Will, also executed on the same day.

5. In the suit, petitioner contended that his children are minors and that the respondents tried to interfere with his possession and enjoyment of both the properties and therefore he filed the suit.

6. Written statement was filed opposing the grant of relief to the petitioner. However, no plea was raised in the written statement specifically that since petitioner's children are minors and since the suit is also filed on their behalf, they ought to be impleaded as parties to the suit and permission of the Court under Order XXXII Rule 2 CPC should be obtained.

7. After the suit was pending for 12 years, on 20.06.2017 I.A.No.715 of 2017 was filed by the respondents taking the plea that the suit, filed without impleading the minor children of the petitioner, is not maintainable and permission under Order XXXII Rule 1 CPC ought to be obtained.

8. Counter affidavit was filed by the petitioner opposing the same and stating that petitioner's side evidence has been closed and it is posted for respondents' evidence and at that stage, only to protract the proceedings, this application is filed. It is further contended that since no plea was taken in the written statement, the contentions now raised by the respondents are deemed to be waived, particularly, when the suit is filed for perpetual injunction and petitioner and his children are in possession of the property.

9. By order dt.03.07.2018, the Court below allowed the application. It held that petitioner did not show the minors and did not seek permission from the Court when he was acting as next friend of his children and under Order XXXII

Rule 2(2) CPC if a suit is instituted by and on behalf of the minors without next friend, the defendant may apply to have the plaint taken off the file and direct the petitioner to file a fresh suit after following due process of law.

10. Challenging the same, this Revision is filed.

11. While ordering 'Notice before admission' on 24.07.2018 in the Revision, this Court suspended the order dt.03.07.2018 in I.A.No.715 of 2015 and also granted injunction in petitioner's favour in I.A.No.1 of 2018 filed in the Revision.

12. Counsel for petitioner contended, firstly, that the suit is filed by the petitioner, who is a major, not only on his behalf but also on behalf of his children; the Court below did not notice the said fact and presumed that the suit was filed only for the benefit of his children, and since they were not impleaded, there was no compliance of Order XXXII Rule 2(1) CPC and passed the impugned order.

13. Counsel for petitioner also contended that at best the Court below could have directed to implead his minor children and to file an application under Order XXXII Rule 2(1) CPC to represent them but the plaint itself cannot be taken off the file.

14. Smt S. Parimeeta, Counsel for respondents does not dispute that the suit was filed by the petitioner, who is a major, and the petitioner himself is claiming A-Schedule property in the suit.

15. Merely because, in the suit, the petitioner also sought relief for B-Schedule property, which he claims to be belonging to his minor children, the Court below could not have directed the plaint to be taken off the file of the Court since that would render the suit even as regards plaint A-Schedule property infructuous.

16. At best, the Court below could have directed the petitioner to implead his minor children and also file an application under Order XXXII Rule 1 CPC, instead of permitting the petitioner to file a fresh suit after returning the plaint under Order XXXII rule 2(2) CPC, since the matter has already been pending for the last 13 years.

17. It is stated by the counsel for petitioner that the children of the petitioner, who were minors in 2005, have since become majors.

18. In this view of the matter, the Civil Revision Petition is allowed; the order dt.03.07.2018 in I.A.NO.715 of 2017 of the Principal Junior Civil Judge, Punganur is set aside; the suit is restored to the file of the Principal Junior Civil Judge, Punganur; petitioner is directed to take steps by filing an

application under Order I Rule 10 CPC seeking impleadment of his minor children as plaintiffs in the suit along with an application under Order XXXII Rule 1 CPC; and the Court below is directed to consider the said applications, which shall be filed within a period of two (02) weeks from the date of receipt of copy of this order after notice to the respondents; and the Court below shall decide the said applications in accordance with law and then proceed to decide the suit. The interim order granted pending the Revision shall stand extinguished by this order. No order as to costs.

19. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

21st August, 2018.

Note: Issue CC three days
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