

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.3711 OF 2015

ORDER:

This revision petition is filed under Article 227 of the Constitution of India challenging the order dated 12.08.2015 in I.A.No.138 of 2014 in O.S.No.162 of 2012 passed by the VI Additional District and Sessions Judge, Markapur, dismissing the petition filed under Order 1 Rule 10(2) read with Section 151 C.P.C.

2. The petitioners filed petition to implead third party as the 5th defendant alleging that the 1st respondent in the suit for partition is husband of the 1st petitioner herein and that the parties are inter related.

3. According to the contention of the petitioners/plaintiffs, the suit schedule property is a joint family property and during pendency of the suit, the 1st respondent entertained an evil desire, colluding with the 2nd respondent bent upon to alienate the schedule properties in dispute and in order to divert the sale proceeds of the property through a different channel and to benefit the widow daughter-in-law of the 2nd respondent and without caring the well being and maintenance to her and that when she was bed ridden the 1st respondent mercilessly driven her out from the residential house and now she is in the streets. The 1st respondent is under the thumb of the 2nd respondent playing entire game behind the screen, created sham and nominal document in respect of ancestral property and sold away an extent of 46 ¼ sq. yards of Item No.4 of plaint schedule property in Survey No. 914/2014 for nominal sale consideration, which is not

inconsonance with price prevailing as on the date of execution of the document and that the sale of the property during pendency of the suit is hit by doctrine of *lis pendence* as contemplated under Section 52 of the Transfer of Property Act and thereby the purchaser is proper and necessary party to avoid multiplicity of proceedings and prayed to implead the purchaser of the property as the 5th defendant in the suit.

The 1st respondent filed counter denying the material allegations *inter alia* contending that the schedule of property was purchased by him with his own funds under document No.1116/1993, dated 24.11.1993 and running rice mill under the name and style of Sri Balaji Rice Mill without any interruption. Moreover, the 1st respondent has right to mortgage and dispose of the property in his individual capacity being owner of the property. The 1st respondent also contended that he obtained loans from State Bank of India, Bazaar Branch, Markapur by hypothecating Sri Balaji Rice Mill. The 1st respondent is paying taxes regularly to the Grampanchayat, Rayavaram and electricity connection was obtained in the name of Sri Balaji Rice Mill and thus, he is absolute owner of the property, sold part of it. Therefore, the question of creating sham and nominal document by him does not arise and prayed to dismiss the petition.

The 5th respondent, proposed party also filed written statement in the main suit itself contending that he is bonafide purchaser for valuable consideration and that the petitioners are not entitled to implead the 5th respondent as necessary party in the suit and prayed for dismissal of the petition.

Upon hearing, both counsel and perusing the material available on record, the Court below dismissed the petition holding that the 5th respondent is not proper and necessary party to the suit recording finding that the petitioners did not produce any documentary proof that the said property is ancestral property and they are entitled to claim share in the property except making allegation that the document was created for the purpose of avoidance of claim by the petitioners.

Aggrieved by the impugned order, the present revision petition is filed on various grounds reiterating the grounds urged in the main petition and requested this Court to allow the petition setting aside the impugned order and implead the proposed party as the 5th respondent in the suit.

Whereas, counsel for the respondents contended that the 5th respondent cannot be impleaded as party being purchaser of the property from the 1st respondent for valuable consideration and thereby, he is neither proper nor necessary party to the suit, while supporting the impugned order in all respects.

Considering the rival considerations and material available on record, the point for consideration is:

Whether the 5th respondent is proper or necessary party to the suit, if so, the impugned order passed by the Court below recording finding in para 9 be sustained?

POINT:

Undisputedly, 46 $\frac{1}{4}$ sq. yards of the property was purchased by the 5th respondent, proposed party from the 1st respondent, who is claiming to be the absolute owner of the property under registered sale deed document No.914/14, dated

10.04.2014. But whereas, the petitioners are claiming that they are the joint owners, the property belongs to joint family and liable for partition and requested the Court to implead the purchaser, who purchased the property during pendency of the suit as the 5th defendant in the main suit. The Court below accepted about execution of sale deed dated 24.11.1993 bearing No.1116 of 1993 registered with SRO, Podili and running rice mill in the name and style of Sri Balaji Rice Mill without interruption and obtained loan from State Bank of India, Bazaar Branch, Markapur by hypothecation and to discharge the said debt, sale deed dated 10.04.2014 was executed in favour of the 5th respondent, proposed party. The Court below in para 8 extracted the contentions and recorded finding in para 9 holding that the petitioners/plaintiffs did not file any documentary proof to show that the above said property was the ancestral property and they are also having share in the property allegedly sold to the 5th respondent by the 1st respondent. Recording such finding in para 9 of the order of the Court below is premature, while deciding application under Order 1 Rule 10 C.P.C. The Court below has not accepted to record that part of the property sold to the 5th respondent is not ancestral property. Such finding shall be recorded only after completion of trial. Instead of resorting to such procedure to record such finding at the end of trial, the Court below while deciding application under Order I Rule 10 C.P.C., negated the relief.

Admittedly, the property purchased by the 5th respondent is part of Item No.4 of the suit schedule property and the contention of the petitioners is that it is an ancestral property. Whereas, the 1st respondent is contending that it is a separate

property having purchased the same under sale deed dated 24.11.1993. But such question has to be decided only after adducing evidence by both parties and when the suit is pending, the sale of the property is hit by Section 52 of the Transfer of Property Act. If any decree is passed, it is bind against the vendor i.e. the 1st respondent, but the same shall not be deemed to be illegal. In case the 1st respondent did not contest the suit, certainly prejudice will be caused to the respondents at least to claim equities in the allotment of property, he must be impleaded as proper and necessary party and in turn the 5th respondent is necessary party to the suit. Therefore, the finding of the Court below that the 5th respondent is not proper and necessary party to the suit, though he admittedly purchased part of the property i.e. Item No.4 of the schedule property through registered sale deed from the 1st respondent is erroneous on the face of record and finding recorded by the Court below in para 9 of the impugned order that the petitioners failed to establish that Item No.4 of the schedule property is joint family property or co-personary property, leaving it open to the Court below to decide the same and record finding at the end of trial. Hence, I hold that part of Item No.4 of the property was purchased by the 5th respondent, he is proper party at least to claim equities in the event of decree in the suit for partition. Consequently, the impugned order is liable to be set aside.

In the result, the civil revision petition is allowed setting aside the order dated 12.08.2015 in I.A.No.138 of 2014 in O.S.No.162 of 2012 passed by the VI Additional District and Sessions Judge, Markapur holding that the 5th respondent is

proper and necessary party to the suit and accordingly, I.A.No.138 of 2014 in O.S.No.162 of 2012 is allowed permitting the petitioners to implead the 5th respondent as the 5th defendant in the suit. The parties are permitted to raise their independent plea in the main suit and on raising such plea, the Court below is directed to decide the suit in accordance with law. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

21.02.2018
kvrn

M. SATYANARAYANA MURTHY,J

