

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.2427 OF 2011

ORDER:

Respondent Nos.35 and 37, who are proposed respondent Nos.35 and 37 (defendant Nos.35 and 37), questioning the order dated 04.03.2011, in I.A. No.65 of 2010 in O.S. No.49 of 1996, passed by the learned Additional Judge - cum - VI Senior Civil Judge, City Civil Court, Hyderabad, preferred the present Civil Revision Petition under Article 227 of the Constitution of India.

2. In fact, I.A. No.65 of 2010 was filed by defendant No.5 - plaintiff, against respondent Nos.1 to 34 and proposed respondent Nos.35 to 37, under Order - VI Rule - 17 of Code of Civil Procedure, 1908, requesting the trial Court to permit him to amend certain portions in his written statement - cum - counter claim to include "D" and "E" schedule properties, on the main ground that they are *Mathruka* properties and certain other details have been mentioned, which details are unnecessary, at this stage, to refer.

3. The learned trial Court, observing that the stand taken by the petitioner therein i.e., defendant No.5, that the plaintiff - respondent No.1 in I.A. No.65 of 2010, filed the suit for partition suppressing some of the *Matruka* properties, shown as Schedules - "D" and "E" properties in the petition, belonging to his (defendant No.5) grandfather, are liable to be partitioned among all his legal heirs,

allowed the application also observing that the contesting respondents did not dispute the said stand specifically.

4. So far as the revision petitioners herein, who are proposed respondent Nos.35 and 37, are concerned, the learned trial Judge would observe that the very same petitioner (defendant No.5 - respondent No.1 herein), when filed I.A. No.64 of 2010 to implead the revision petitioners herein and another party, shown as respondent No.36, as defendant Nos.35, 36 and 37 respectively, dismissed the said petition on the ground that the said transfer of properties were effected during the pendency of the suit and thereby attract doctrine of *lis pendens*, the effect of which is that the decree, which may be passed by the said Court in the suit against the transferors of the properties, will also bind the transferees from them.

5. The learned trial Judge also observed that a suit for partition must include all the properties liable to be partitioned, and, therefore, petition deserves to be allowed, besides observing that inclusion of Schedules - "D" and "E" properties, as prayed for by the petitioner (defendant No.5), are necessary for proper and effective adjudication of the issue involved.

6. Heard Sri Mohd. Adnan, learned counsel for the revision petitioners (proposed respondent Nos.35 and 37), and Sri R.A. Achutanand, learned counsel for the respondent No.1 (defendant No.5), and perused the material on record.

7. The main contention of the learned counsel for the revision petitioners is that when the Court below dismissed I.A. No.64 of 2010, which was intended to bring the present revision petitioners on record as defendant Nos.35 and 37, allowing the present application for inclusion of properties shown as “D” and “E” schedule, would amount to mutually inconsistent findings being recorded. Further, it is his submission that the affidavit in the present application is bereft of all relevant particulars and does not disclose whether the schedules to be included are based on the plea of counter claim being raised and, therefore, the Court ought not to have granted the relief in the interim application, and, therefore, it requires to be revised.

8. Now the short point that arises for consideration is whether the revision petitioners have any locus in view of dismissal of I.A. No.64 of 2010 to question the order under revision, and, whether the order suffers from any irregularity so as to revise it?

9. So far as the first aspect is concerned, when I.A. No.64 of 2010, was dismissed, filed by defendant No.5 (respondent No.1 herein), who also filed the petition in which the present order under revision was passed, it cannot be said that the revision petitioners cannot prefer a revision challenging the said order and it cannot be viewed that defendant No.5 alone should be the aggrieved party and on that ground, they cannot now seek to revise the order under challenge. So, the revision petitioners cannot be construed as aggrieved persons, now, for the reason, the application in I.A. No.64

of 2010 was dismissed and the result being that the they are not allowed to be defendant Nos.35 and 37.

10. Touching merits, whether "D" and "E" schedule properties are *Mathruka* properties or whether all the legal heirs are entitled to respective shares therein, the said aspect can only be gone into in the main suit. However, looking at omission to add Schedules - "D" and "E" properties, the consequence would be permanent deprivation of the right of the legal heirs, who are legitimately entitled to their respective shares. The description of the properties is given in the petition schedule. The relevant amendments have been mentioned in the affidavit and so also in the petition. Thus, there is no merit in the present revision.

11. Therefore, the Civil Revision Petition is dismissed. There shall be no order as to costs.

12. As a sequel thereto, Miscellaneous Petitions, if any, pending in the present revision petition stand dismissed.

A. SHANKAR NARAYANA, J

March 19, 2018.

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