

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION Nos.5824 & 5914 OF 2018

COMMON ORDER:

These two Civil Revision Petitions, under Article 227 of the Constitution of India, are filed assailing the orders and decretal orders, dated 19.09.2018, in I.A.Nos.602 & 603 of 2018 in O.S.No.30 of 2010 passed by the learned III Additional District Judge, Nellore.

1.1 The afore-said applications are filed by the special power of attorney holder of the proposed plaintiffs 3 & 4 requesting for permission for their impleadment as plaintiffs 3 & 4 and also to accord permission to the said power of attorney holder to represent them.

2. I have heard the submissions of Smt Y.L. Shiva Kalpana Reddy, learned counsel for the revision petitioners/proposed plaintiffs 3 & 4, ['proposed plaintiffs 3 & 4', for brevity]; of the learned Government Pleader, appearing for the official respondents 3 to 5; and of Sri V.Siva Prasad Reddy, learned counsel appearing for the respondents 6 and 8. It is stated that the 7th respondent died. The respondents 1 & 2, being plaintiffs and parents of the proposed plaintiffs 3 & 4, are stated to be not necessary parties as they are sailing with their children, the proposed plaintiffs 3 & 4. I have perused the material record.

3. To begin with, the facts, which are necessary to be stated as a preface to the order, in brief, are as follows: - 'The respondents 1

& 2 herein, who are the parents of the proposed plaintiffs 3 & 4, brought the suit against the respondents 3 to 8 herein for a declaration that the plaintiffs 1 & 2 and their family members are absolute owners of the plaint schedule property, consequential permanent injunction and costs. Indeed, the suit is filed through the Special power of Attorney Holder of the plaintiffs. The official respondents 3 to 5 as well as non official respondents 6 to 8 are contesting the suit. At the stage of conclusion of the trial, IA.No.602 of 2018 was filed requesting for permission for impleadment of the petitioners as plaintiffs 3 & 4; and, IA.No.603 of 2018 was filed for according permission to the Special Power of Attorney holder of the proposed plaintiffs 3 & 4 to represent them as they both are residing in different States of United States of America. Both the said interlocutory applications were resisted by the respondents 3 to 6 and 8/contesting defendants. By the orders, which are impugned in these revisions, the trial Court dismissed both the applications afore-stated. Hence, these revision petitions are filed.

4. The case of the proposed plaintiffs 3 & 4, as stated in the affidavits of their special power of attorney holder, in brief, is as follows:

The plaintiffs categorically stated in the plaint that the suit schedule property is a joint family property. In-fact, the suit is filed for a declaration that the plaintiffs and their family members are the absolute owners of the plaint schedule property and for other reliefs, for the benefit of all the joint owners/co-owners, who are all members of the joint family. Hence, the proposed plaintiffs 3 & 4, are having joint rights and joint interest, along with their

parents, the plaintiffs 1 & 2, in the suit schedule property. Since the plaintiffs are the parents of the proposed plaintiffs 3 & 4 and as there is no conflict of interest and as there is only common interest amongst the plaintiffs 1 & 2 and the proposed plaintiffs 3 & 4, the proposed plaintiffs 3 & 4 are also necessary parties to the suit. Hence, they may be permitted to be impleaded as plaintiffs 3 & 4 in the suit, in the interest of justice and for effective adjudication of the *lis* in their presence. Since the plaintiffs 3 & 4 are residing abroad, the suit was filed by the parents in respect of the joint property as they are managing the affairs; and, in-fact, the suit is being prosecuted for the benefit of all the members of the family who are all joint owners/co-owners.'

5. As already noted, the two interlocutory applications were resisted by the respondents 3 to 6 and 8/contesting defendants raising various contentions including the contention that the petition is belatedly filed. One of the contentions of the said respondents is that in the earliest Power of Attorney, which was given by the plaintiffs and the proposed plaintiffs 3 & 4 to a power of attorney holder, it is stated that the power of attorney is given for the benefit of all of them; that the plaintiffs are thus very much aware of the said fact; but, the plaintiffs 1 & 2 alone instituted the suit; that their children, that is, the proposed plaintiffs 3 & 4 have not joined them as co-plaintiffs; that for the above said reason and for the delay on the part of the plaintiffs 3 & 4 in approaching this Court and in filing the present applications, the proposed plaintiffs 3 & 4 are not entitled to be impleaded.

6. I have given earnest consideration to the core facts, which are narrated supra.

7. It is pertinent to note that in a suit instituted against third parties by one or two joint owners/co-owners in respect of joint property/joint family property, the other co-owners/joint owners are not necessary parties and all the joint owners/co-owners need not join in the suit as plaintiffs, provided the non-impleaded joint owners/co-owners are not disputing the co-ownership or the joint ownership and the suit is instituted for the benefit of all the joint owners/co-owners. In a suit filed in respect of joint property or joint family property against the third parties, the addition of all the joint owners/co-owners as parties to such a suit would be necessary, if only there is an *inter se* dispute between the joint owners/co-owners. That is not so in the case on hand. The plaintiffs, who are the parents of the proposed plaintiffs 3 & 4, are not opposing for the impleadment of the proposed plaintiffs as co-plaintiffs 3 & 4. In fact, in the plaint, it is pleaded that the proposed plaintiffs 3 & 4, who are members of the family are also having right and interest in the suit schedule property and that the property is a joint family property; and, indeed, the relief is also sought for the benefit of the proposed plaintiffs 3 & 4 as well, who are the co-owners/joint owners/joint family members. In this back drop it is to be examined as to whether it is just and necessary to accord permission to the proposed plaintiffs 3 & 4 for their impleadment as plaintiffs 3 & 4 in the suit.

8. In the light of the above stated admitted facts, the addition of the plaintiffs 3 & 4 as co-plaintiffs would not have been necessary

in the normal course of events. However, it is fairly stated before this Court that during the cross examination of the PW1 done on behalf of some of the contesting defendants it was suggested that the suit is not maintainable and that the suit is liable to be dismissed for non-joinder of the plaintiffs' children, who are stated to be joint owners/co-owners, as parties to the suit. In view of the very stand taken by the contesting defendants, it is just and fair to permit the proposed plaintiffs 3 & 4 to come on record as plaintiffs 3 & 4 and prosecute the suit along with their parents, the plaintiffs 1 & 2. It is necessary to note that it is sought to be contended that in land ceiling proceedings certain extent of land is found to be a surplus land and that the same is surrendered and that the balance extent of land is the present subject matter; further, certain other contentions touching the merits of the matters covered by the issues framed in the suit are also raised. However, while considering the limited question as to whether the proposed plaintiffs 3 & 4 shall be accorded permission for their addition as plaintiffs 3 & 4, this Court need not advert to the said aspects or any other similar aspects, which are to be examined on merits by the trial Court at an appropriate stage, that is, at the later stage, when the issues settled for trial are taken up for adjudication.

9. I have also perused the two Powers of Attorney, which are filed by the proposed plaintiffs 3 & 4, which empowered and authorised their special power of attorney holder to represent them in the suit. On such perusal and on careful consideration, this Court finds that there are no impediments for according permission to the proposed plaintiffs 3 & 4 to be represented by their said special power of attorney holder.

10. On the above analysis and for the reasons aforesaid, this Court is of the considered view that the revision petitioners/proposed plaintiffs 3 & 4, who made out valid and sufficient grounds for their addition as plaintiffs 3 & 4 in the suit, may be permitted to be impleaded as plaintiffs 3 & 4 and that the orders refusing to grant the requests of the proposed plaintiffs, which were passed by the trial Court in the two applications, without appreciating the facts & contentions in proper perspective, brook interference.

11. In the result, the Civil Revision Petitions are allowed and the orders and decretal orders, dated 19.09.2018, in I.A.Nos.602 and 603 of 2018 in O.S.No.30 of 2010 passed by the learned III Additional District Judge, Nellore, are set aside and as a sequel, the said applications are allowed according permission to the proposed plaintiffs 3 & 4 for being represented by their special power of attorney holder and for their impleadment as plaintiffs 3 & 4. The plaintiffs 1 & 2 shall accordingly carry out the necessary amendments and consequential amendments to the plaint as stated in the application in IA No. 602 of 2018.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, in these Civil Revision Petitions shall stand closed.

JUSTICE M.SEETHARAMA MURTI

Date: 30.10.2018
AMD

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