

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CIVIL REVISION PETITION No.143 of 2014

ORDER:

Respondents 3 and 4 in I.A.No.1206 of 2012 in O.S.No.788 of 2010 are the revision petitioners herein. They challenged the order, dated 28.06.2013, passed in the said I.A by the learned I – Additional Senior Civil Judge, Kakinada, permitting the third party, one Yeramati Rambabu to come on record as the 3rd plaintiff in the suit. In fact, the 1st respondent in the said I.A is the plaintiff.

Heard Sri S. Siva Bhami Reddy, learned counsel for the petitioners.

Learned counsel for the petitioners would submit that despite taking various sustainable objections in the counter filed by them, the Court below did not refer to any of the counter allegations and passed the order under challenge and, thus, proper adjudication is not forthcoming and the order under challenge is pre-judicial to the interest of the revision petitioners.

Perused the order under challenge. In the said order, though, the learned Senior Civil Judge referred to the application filed by the plaintiff under Order 1 Rule 8 of CPC to permit him to represent the general body of the creditors of the 1st defendant, having observed due formalities and even referred to an application in I.A.No.231 of 2013, which was simultaneously disposed of along with the application at

hand, and thereafter, observing that the petitioner in the said I.A claimed that he is one of the creditors of the 1st defendant and since the suit is filed for declaration that the alienations made by defendants 2 to 4 inter se are fraudulent and sham and intended to defeat and defraud the creditors and, thus, finding the petitioner – Yeramati Rambabu is a necessary party to the suit and the 1st respondent as plaintiff did not raise any objection for impleadment as co-plaintiff, allowed the petition. Thus, the order does not reflect the allegations made in the counter resisting the request including non-compliance of the provisions of Rule 32 of the Civil Rules of Practice in the petition filed seeking permission to represent the decree holder as power of attorney holder and certain other relief aspects mentioned in paragraphs '4' and '5' of the counter. The trial Court, without discussing the objections raised by the revision petitioners herein, who filed a common counter as respondents 3 and 4 in the said application, just cannot allow the petition on the mere ground that the 1st respondent – plaintiff in the I.A did not raise any objection for impleadment of the petitioner as the 3rd plaintiff. Therefore, the order under challenge cannot be sustained.

Hence, the Civil Revision Petition is allowed setting aside the order under challenge and remitting the matter to the I-Additional Senior Civil Judge, Kakinada, for disposal of I.A.No.1206 of 2012 in O.S.No.788 of 2010 afresh by affording an opportunity of being heard to the parties and taking into consideration the averments made in the

common counter affidavit filed by the revision petitioners controverting the allegations in the affidavit filed by the petitioner – 1st respondent herein.

Miscellaneous petitions if any pending in the present revision stand closed. There shall be no order as to costs.

JUSTICE A.SHANKAR NARAYANA

06.06.2018
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