

THE HONOURABLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

CIVIL REVISION PETITION No.6422 of 2018

ORDER:

The petitioners, the proposed parties, are aggrieved by the order dated 27.06.2018, in I.A.No.54 of 2017 in O.S.No.644 of 2012, passed by learned XIII Additional Chief Judge, City Civil Court, Hyderabad, whereby the learned Judge has dismissed the application filed by the petitioners under Order I Rule 10 C.P.C.

2. Brief facts of the case are that respondent No.1, Smt.Faheema Parveen, had filed a suit, namely O.S.No.644 of 2012, for partition and separate possession against her brothers and sisters, the respondent Nos.2 to 9, before this Court. However, petitioner No.1 claimed that his father had entered into an agreement of sale with the father of the plaintiff and respondent Nos.2 to 9. After demise of his father, petitioner No.1 happens to be in possession of the suit schedule property. Accordingly, he filed I.A.No.54 of 2017 for being impleaded in the said suit filed for partition. After demise of petitioner No.1, petitioner Nos.2 to 7 were brought on record. By the impugned order, the said

application has been dismissed. Hence, this civil revision petition before this Court.

3. The learned counsel for the petitioners submits that the reasoning given by the learned Judge is absolutely misplaced. For, the learned Judge has gone into the issue whether the suit for specific performance, which may be filed by the petitioners, would be hit by the limitation or not? According to the learned counsel, the learned Judge has failed to appreciate the scope and ambit of Order I, Rule 10 C.P.C. Therefore, the impugned order deserves to be set aside by this Court.

4. On the other hand, the learned counsel for respondent No.1 has pleaded that although the logic given by the learned Judge may not be legally tenable, but as correct conclusion was drawn by the learned Judge, the impugned order should not be set aside by this Court.

5. Heard the learned counsel for both the parties and perused the impugned order.

6. A bare perusal of the impugned order clearly reveals that the learned Judge has considered the issue whether the petitioners should have filed a suit for specific performance or not? Whether the said suit, if so filed, would be hit by limitation or not? Surprisingly, the learned Judge has not entered into any discussion with regard to the applicability of Order I Rule 10 C.P.C. The learned Judge has discussed neither whether the petitioners would be necessary, nor whether they would be proper parties to the *lis*. Therefore, the impugned order is certainly unsustainable.

7. Therefore, this Court sets aside the order, dated 27.06.2018, in I.A.No.54 of 2017 in O.S.No.644 of 2012 on the file of learned XIII Additional Chief Judge, City Civil Court, Hyderabad, and remands the case to the learned Court. The learned Judge is directed to consider the application under Order I Rule 10 C.P.C., after giving the opportunity of hearing to both the parties.

8. The learned counsel for respondent No.1 informs this Court that the trial has almost come to an end and the judgment would be pronounced shortly. Therefore,

the petitioners should not be permitted to drag on the trial in the garb of pendency of the application filed under Order I Rule 10 C.P.C. Since the apprehension expressed by the learned counsel is a reasonable one, this Court directs the learned Judge to decide the said application, positively, by January, 31st 2019.

9. With the above directions, the Civil Revision Petition is disposed of.

10. As a sequel, pending miscellaneous petitions, if any, shall stand closed. No order as to costs.



RAGHVENDRA SINGH CHAUHAN, J

20th December, 2018
GHN