

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.6260 OF 2017

ORDER:

Assailing the order, dated 11.10.2017, passed in I.A.No.542 of 2015 in O.S.No.2 of 2012 on the file of Junior Civil Judge, Kothapeta, wherein the application filed by the petitioner/proposed defendant No.3 to implead him as defendant No.3 in the Suit was rejected, the present revision petition came to be filed under Article 227 of the Constitution of India.

2. Heard learned counsel for the petitioner.

3. In spite of service of notice, there is no representation on behalf of respondent Nos.1, 2 and 4. As seen from the record, it appears that respondent No.3 died during pendency of the present revision petition.

4. Respondent Nos.1 and 2 herein/plaintiffs filed the aforesaid Suit against respondent Nos.3 and 4 herein/defendants seeking to declare them as absolute owners of the petition schedule property and also to grant permanent injunction restraining respondent Nos.3 and 4 and their men from interfering with their peaceful possession and enjoyment over the petition schedule property. In the said Suit, the present I.A. is filed by the petitioner to implead him as defendant No.3 in the Suit.

5. The averments made in the affidavit filed in support of the Interlocutory Application show that one Chinnam Ramayya had three sons and three daughters. Chinnam Narasayya, Chinnam Venkanna, who is respondent No.3, and the petitioner are the sons, whereas Nalla Saiindra Rayudu, Musalamma and Janga Peda Musallamma are the daughters. The said Chinnam Ramayya got the schedule property by way of grant from the Government of Andhra Pradesh under landless poor. Subsequent to the death of Chinnam Ramayya, his elder son, by name Chinnam Narasayya, has been managing the schedule property as the 'Karthi' of the Hindu Joint Family. In fact, the said Narasayya died issueless and later, his wife, by name Chinnam Lakshmi Kantam, also died. Since then, the petitioner and respondent No.3 claim to be enjoying the schedule property and respondent No.3 happened to be managing the schedule property, as he is eldest one among the brothers, after the death of Chinnam Narasayya. While things stood thus, the petitioner came to know about filing of the aforesaid Suit by respondent Nos.1 and 2/plaintiffs against respondent Nos.3 and 4/defendants, basing on a Will Deed, dated 18.07.2011, said to have been executed by Chinnam Lakshmi Kantam, wife of Chinnam Narasayya, in favour of respondent Nos.1 and 2/plaintiffs. It is stated that all the respondents colluded with each other and with a view to grab the property, did not make the petitioner

herein as a party to the Suit. It is the case of the petitioner that the petition schedule property was partitioned by way of an unregistered Partition Deed, hence, pleads that it would be just and proper, if he is impleaded as defendant No.3 in the Suit.

6. Counter came to be filed by respondent Nos.1 and 2/plaintiffs denying the averments made in the affidavit filed in support of the Interlocutory Application. It is stated that if really the petitioner is having any grievance, nothing prevented him from filing an independent Suit. It is further stated that since the document, on which the petitioner is relying upon, is in dispute, the question of impleading him would not arise.

7. Respondent Nos.3 and 4/defendants also filed separate counter disputing the claim of the petitioner over the petition schedule property. Their claim is based on an unregistered Gift Deed said to have been executed by Chinnam Lakshmi Kantam in favour of respondent No.4.

8. After hearing both the parties, the trial Court, vide the order under challenge, rejected the request of the petitioner. Challenging the same, the present revision petition came to be filed.

9. Learned counsel for the petitioner would submit that in view of the unregistered Partition Deed, dated 19.03.2014,

respondent Nos.1 and 2/plaintiffs cannot claim any right over the petition schedule property. He would further submit that the petition schedule property was already partitioned, which was reduced into writing, and in view of the said Partition Deed, the petitioner intends to come on record. He would further submit that the Will Deed, dated 18.07.2011, and other documents, basing on which claims are made, are all forged.

10. As stated earlier, in spite of service of notice, there is no representation on behalf of respondent Nos.1, 2 and 4.

11. As seen from the record, the claim of respondent Nos.1 and 2/plaintiffs is based on a Will Deed, dated 18.07.2011, said to have been executed by Chinnam Lakshmi Kantam, W/o. Chinnam Narasayya, in favour of respondent Nos.1 and 2/plaintiffs. Respondent Nos.3 and 4/defendants are claiming right over the petition schedule property in view of the unregistered Gift Deed executed by Chinnam Lakshmi Kantam in favour of respondent No.4, bequeathing the petition schedule property on 05.02.2007 and after the death of Chinnam Lakshmi Kantam on 08.09.2011, respondent No.4 becoming absolute owner of the petition schedule property. The claim of the petitioner is based on an unregistered Partition Deed said to have been executed on 19.03.2014.

12. As seen from the order under challenge, the reason for rejecting the claim of the petitioner appears to be that even if the petitioner is impleaded as a party to the Suit, no purpose would be served and the cause of action in the Suit gets completely changed. It may not be correct to say that the cause of action in the Suit changes, if the petitioner comes on record, since the case of the petitioner appears to be that respondent Nos.3 and 4/defendants colluded with respondent Nos.1 and 2/plaintiffs and filed the present Suit with a view to take away the land, which the petitioner claims to have a right, pursuant to the unregistered Partition Deed. Further, the Court below granted liberty to the petitioner to file an independent Suit seeking partition of the petition schedule property. As the Suit is at the initial stage, there is no point in directing the petitioner to file an independent Suit seeking partition of the petition schedule property. If the petitioner is directed to file an independent Suit, it will lead to multiplicity of proceedings and may lead to inconsistent orders. In view of the above, it would be just and proper, if the petitioner is permitted to come on record as defendant No.3 and contest the matter in accordance with law.

13. Accordingly, the Civil Revision Petition is allowed. Consequently, I.A.No.542 of 2015 in O.S.No.2 of 2012 on the file of Junior Civil Judge, Kothapeta, is allowed and the petitioner is permitted to come on record as defendant No.3 in

the Suit. However, the truth or genuinity of the unregistered Partition Deed, dated 19.03.2014, and the claim of the petitioner over the said document shall be decided by the trial Court during trial.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

February 02, 2018
MD

