

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 6307 of 2017

ORDER:

1) Aggrieved by the order dated 04.10.2017, passed in I.A.No.138 of 2017 in L.R.A.No.1 of 2015 on the file of the IV Additional District Judge, Kakinada, wherein and whereunder an application filed by the first respondent herein to implead her as respondent No.2 in the appeal was allowed, the present Civil Revision Petition came to be filed.

2) The facts in issue are as under:

The petitioner is none other than the sister of the first respondent herein. During his life time, the father of the petitioner and first respondent herein, filed a declaration in L.C.C.No.1023/KDA/ 75 under Section 8 of the Ceiling Act 1/73. The Land Reforms Tribunal, Kakinada, vide its order dated 02.06.1976 determined the holding that the declarant is a surplus land holder to an extent of 1.5537 square meters and called upon him to surrender the land equivalent thereto. As he failed to surrender the excess land inspite of notice issued to him, the Tribunal published a notice in Form No.VIII on 19.12.1992 inviting objections. In the mean time the declarant died. At the stage of surrendering the surplus land, the petitioner filed a claim-petition to which the first respondent herein filed an objection to the surrender of the land by the declarant stating that they are in

possession of the said land. Vide order dated 04.04.2015, the Land Reforms Tribunal-cum-Revenue Divisional Officer, Kakinada, rejected both the claim-petition filed by the petitioner as well as the objection filed by the first respondent herein. Challenging the same, the petitioner herein filed L.R.A.No.1 of 2015, where as the first respondent herein filed L.R.A.No.2 of 2015. In L.R.A. No.2 of 2015, the petitioner is made as party to the proceedings. As the L.R.A.No.1 of 2015 was filed without making the first respondent as party, she filed an application I.A.No.138 of 2017 to implead her as second respondent in the appeal.

3) A counter came to be filed by the petitioner herein stating that she was in possession of Ac.2.00 of land which was also claimed by the first respondent, though she is not having any right over the said property.

4) After considering the rival submissions, the trial Court allowed the petition. Challenging the same, the present Civil Revision Petition came to be filed.

5) Learned counsel for the petitioner would submit that the petitioner has no right or interest over the property. Unless and until her rights are declared by Civil Court, the first respondent herein is not entitled to file any petition to add her in this appeal, as the scope of appeal is very limited. He further submits that the Court below has not taken into consideration the purport of Order 1 Rule 10 of C.P.C. before adding third party to the proceedings.

6) Learned counsel for the first respondent/proposed party opposed the revision contending that the presence of the proposed party, who is claiming right over the property as one of the legal heirs of the declarant, is just and necessary.

7) Before proceeding further, it would be useful to refer to Order I, Rule 10 of C.P.C. which reads as under:

Order I. Rule 10. Suit in name of wrong plaintiff.(1)

Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or add parties. The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

Where defendant added, plaint to be amended. (4) Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the Indian Limitation Act, 1877, Section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

8) A perusal of Order 1 Rule 10 of the CPC would show it is open to the Court to add any such person as necessary party in the suit, so as to enable the Court to effectively adjudicate the questions involved in the suit. Under Order 1 Rule 10 of C.P.C., impleadment can be ordered by the Court when it finds that in the absence of the applicant seeking impleadment as party to the suit, the controversy raised in the suit cannot be effectively and completely settled.

9) A perusal of the material placed before the Court would show that the proposed respondent is none other than the sister of the petitioner herein. It is also not in dispute that the petitioner herein filed the present appeal aggrieved by the order dated 04.04.2015 passed in I.A.No.1 of 2009 in L.C.C.No.1023/ KDA/ 75 on the file of the Presiding Officer, Land Reforms Tribunal-cum-

Revenue Divisional Officer, Kakinada, wherein the first respondent is shown as respondent/ objector. It is also not in dispute that the first respondent is one of the legal heirs of Devu Veerabhadra Rao (declarant). Without making her as party, the petitioner herein filed an appeal before the Land Reforms Appellate Tribunal, Kakinada. If any order is passed, without hearing the first respondent it would definitely cause great prejudice to her. In that view of the matter, this Court is of the opinion that it would be just and proper to allow the first respondent to come on record and contest the matter.

10) Further a reading of the affidavit and the counter, *prima facie* indicate that the first respondent herein is also claiming a portion of land in the appeal schedule property. As stated earlier, the claim of the first respondent is that her father executed a registered gift deed dated 02.08.1989, bequeathing land to an extent of Ac.0.88 cents in Sy.No.198 and also sold an extent of Ac.1.20 cents in the same survey number for a sale consideration of Rs.30,000/- and possession was delivered to her. It is also stated that the appellant has not added her as party only with an intention to obtain orders behind her back. It is to be noted that no prejudice would be caused to the petitioner, if the first respondent herein is added as second respondent in the appeal. Since the claim made by the first respondent would be based on the documents, there is nothing wrong in allowing her to come on record, so as to prove her case.

11) Hence, this Court is of the view that the order under challenge, wherein the first respondent herein is made as party to the proceedings, as second respondent, warrants no interference. For the aforesaid reasons, I see no merits in the revision and the same is liable to be dismissed.

12) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending shall stand closed.

02.05.2018
gkv



C. PRAVEEN KUMAR, J