THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.5474 of 2017

ORDER:

Aggrieved by the Order dt.19.09.2017 in I.A.No.571 of 2017 in O.S.No.249 of 2011 passed by the Principal Senior Civil Judge, Chittor, the petitioners herein/defendant Nos. 4 to 6 filed this Civil Revision Petition under Article 227 of the Constitution of India.

The petitioners herein filed Petition under Order 1 Rule 10 CPC to implead the proposed petitioner Nos. 1 to 3 and Respondent Nos. 6 to 10 as defendant Nos. 4 to 11 in the main suit alleging that the property shown in the schedule was acquired with the joint family funds and they are claiming to be the legal heirs of K.V. Kodanda Reddy and thereby they are also entitled to claim share in the property and in their absence, the suit claim cannot be decided finally and effectively.

The defendant Nos. 1 and 2/plaintiffs filed Counter while contending that they were set up by first defendant, who remained *ex parte,* to defeat the rights of the plaintiffs in the main suit and they are neither proper nor necessary party to the suit filed for partition in the absence of any existing joint family and requested to dismiss the petition.

Whereas the respondent Nos.4 to 6, the petitioners herein, filed independent counters contending that Item No.2 of the schedule property and other properties were purchased under registered sale deed out of the self earnings. Venkata Reddy and Kondareddy divided the properties long ago and living separately. By the time, no joint family properties were existing, but due to love and affection, Venkata Reddy executed a Gift Deed in favour of Kodandareddy donating certain properties and since then K.V. Kondanreddy branch enjoying the said

properties, but there was no connection between Venkata Reddy branch and Kondareddy branch and that the proposed petitioners are neither necessary party nor proper party to the suit filed for partition.

Similarly, respondent No.6 also filed Counter alleging that K.V. Venkat Reddy and K.V.Kondareddy divided the properties long back and that there was no joint family properties by the date of separation of K.V.Venkata Reddy and K.V.Konda Reddy, but K.V.Venkata Reddy executed Gift Deed dt. 04.09.1961 out of love and affection in favour of Kodanda Reddy and the said property covered by Gift Deed is being enjoyed by the branch of Kondareddy and that the petitioners are neither proper or necessary parties to the suit.

Upon hearing both the counsel, the trial Court allowed the petition in part while impleading the proposed parties i.e., respondent Nos. 6 to 10, who are the daughters of K.V.Venkata Reddy, as Defendant Nos. 4 to 8 for better adjudication while negating the relief to implead the petitioner Nos. 1 to 3 in the suit filed for partition, who are claiming rights through Kondanda Reddy.

Aggrieved by the Order of the trial Court, the present revision is filed on the ground that K.V. Venkata Reddy and K.V. Kondareddy never separated and they are living together and that the schedule property was purchased with the joint earnings and thereby, the petitioners are also entitled to claim share in the property, but the Trial Court did not consider their plea in proper perspective and committed error in dismissing the petition partly and requested to set aside the Order passed by the trial Court permitting the petitioners to come on record.

In a suit filed for partition by the son and daughter of Defendant No.1, who deserted his wife and living separately, all members of the joint family are necessary parties to the suit and the suit for partition must

also embrace all the members is a general principle. But, according to the contentions of the plaintiffs/respondents herein, that the petitioners are no way concerned and they are claiming right through K.V. Kondareddy branch, who is allegedly separated prior to filing of the suit and that K.V.Venkata Reddy executed a gift deed in favour of Kondareddy out of love and affection and therefore, there was no joint family and that the trial Court also concluded that the petitioners did not produce any piece of evidence to establish that they were living together as members of the joint family and enjoying the property or at least to establish that the property was acquired with the joint assertion of the members of the family. In the absence of any material on record, permitting the petitioners to come on record and commence the proceedings from the beginning would not serve any purpose, except to protract the trial of the suit for one reason or the other. When the petitioners are not the members of the joint family, they cannot be impleaded as they are not having either direct or indirect interest in the property and therefore, the order passed by the trial Court cannot be interfered since the petitioners are neither proper nor necessary party to the suit. Hence, I find no ground to interfere with the findings of the trial Court exercising power under Article 227 of the Constitution of India. Consequently, the present Petition is liable to be dismissed.

Accordingly, this Civil Revision Petition is dismissed.

M. SATYANARAYANA MURTHY, J

Date: 15-11-2018
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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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Dt. 15-11-2018

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