

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.5803 OF 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 07.08.2017 passed in I.A.No.369 of 2017 in O.S.No.5 of 2006 on the file of II Additional District Court, Amalapuram, East Godavari District.

2. Heard the learned counsel for both parties.

3. The facts leading to filing of the present revision are briefly as follows:

Respondent Nos.1 and 2 have filed O.S.No.5 of 2006 on the file of II Additional District Court, Amalapuram, East Godavari District, against respondent Nos.3 to 12 for partition of the suit schedule property. During pendency of the suit, the petitioner filed I.A.No.369 of 2017, under Order 1 Rule 10 C.P.C. to implead him as one of the defendants in the suit. Respondent No.9 alone filed a counter opposing the claim of the petitioner. The trial Court, after considering the material available on record, arrived at a conclusion that the petition filed by the petitioner is barred by law and dismissed the petition. Hence, the revision.

4. The point that arises for consideration is:

“Whether there is any illegality, irregularity or impropriety in the impugned order?”

5. Respondent Nos.1 and 2 have filed O.S.No.5 of 2006 against respondent Nos.3 to 12 for partition of the suit schedule property. The respondents are interrelated to each other. It is the case of the

petitioner that he purchased the property from the second defendant under a registered sale deed dated 03.02.2016. It is not in dispute that the property covered under the sale deed dated 03.02.2016 is the subject matter of the suit. It is the case of the petitioner that he is a *bona fide* purchaser for a valuable consideration. The fact remains that the petitioner purchased the property from the second defendant during pendency of the suit. The trial Court dismissed the application with the following observation:

“.....the court is of opinion that the transaction between petitioner and the second respondent is barred by law, and petitioner is precluded from impleading himself as defendant stepping into the shoes of 2nd respondent by construing himself as necessary party.”

6. It is a settled principle of law that while disposing of the interlocutory application the Court should not express opinion touching the merits of the main case. While deciding the interlocutory application, the trial Court arrived at a conclusion that the sale transaction between the petitioner and second respondent is barred by law. Section 52 of Transfer of Property Act deals with the transaction that took place during pendency of the suit. Whether such transaction is a valid one or not will be decided after full-fledged trial only. The petitioner filed I.A.No.369 of 2017 under Order I Rule 10 C.P.C. The Court has to consider whether the petitioner is a necessary and proper party to the proceedings or not. The Court has to consider whether it can adjudicate the matter effectively even in the absence of the proposed party. The trial Court has not addressed the above two aspects. A perusal of the impugned order clearly reveals that the

trial Court proceeded on a premise as if the point involved in the petition is whether the transaction is hit by Section 52 of Transfer of Property Act or not. As observed earlier, the Court has to give a specific finding whether the petitioner is a necessary and property party to the suit. The trial Court, without giving such finding, dismissed the petition as if it is barred by law. The finding recorded by the trial Court is not sustainable either on facts or in law.

7. Taking into consideration the facts and circumstances of the case, this Court is of the considered view that it is a fit case to allow the revision and remand the matter to the trial Court.

8. In the result, the Civil Revision Petition is allowed, setting aside the order dated 07.08.2017 passed in I.A.No.369 of 2017 in O.S.No.5 of 2006 on the file of II Additional District Court, Amalapuram, and remanding the matter to the trial Court. The trial Court is hereby directed to dispose of I.A.No.369 of 2017 afresh keeping in mind the scope of Order I Rule 10 C.P.C., as expeditiously as possible, preferably within a period of four (4) weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

9. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 28.11.2018
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