

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.R.P.No.6657 of 2017

O R D E R:

Heard counsel for the petitioners Sri.M.Ramalingeswara Reddy and Sri N.Ananda Rao, for the respondents.

2. Third parties to O.S.No.61 of 2012 on the file of the Principal Junior Civil Judge, Adoni, are the petitioners in the present revision filed under Article 227 of the Constitution of India. 9th respondent herein instituted O.S.No.61 of 2012 against the respondents 1 to 8 herein, for declaration of title and for permanent injunction in respect of the property admeasuring acres 5.77 cents out of acres 6.83 cents situated at Mekadona village, Pedda Kadabur mandal, Kurnool district. In the said suit, the petitioners filed I.A.No.320 of 2017 under the provisions of Order 1 Rule 10 r/w. 151 of C.P.C., seeking their impleadment as plaintiffs 2 to 4. The said application was contested by the defendants by way of filing counter. The learned Principal Junior Civil Judge, Adoni, by way of an order dated 05.05.2017, dismissed the said application. This revision challenges the validity and the legal sustainability of the said order.

3. According to the learned counsel for the petitioners, the order impugned is highly erroneous and contrary to law and opposed to the object of Order 1 Rule 10 of Civil Procedure Code. It is further submitted that had the Court below considered the contents of the affidavit filed in support of the application, the questioned order would not have emanated. It is the further submission of the learned counsel that in the event of the application being allowed, the same would not cause any prejudice to the other side. It is further argued by the learned counsel that the Court below ought to have seen that the petitioners herein are proper and necessary

parties in view of the gift deed executed by the plaintiff in the suit, giving the property to the petitioners.

4. On the other hand, it is submitted by the learned counsel for the defendants that there is neither any error nor there exists any infirmity in the impugned order and in the absence of the same, the order impugned is not amenable for judicial review under Article 227 of the Constitution of India. It is further submitted that this application is only an attempt to drag on the issue to the extent possible and it is not a *bona fide* one. It is also the contention of the learned counsel that the petitioners herein are neither the proper nor necessary parties for adjudication of the issue involved in the suit.

5. In the above background, now the issue which this Court is called upon to answer in the present revision is -

“whether the order impugned is in accordance with law or whether the same warrants any interference of this Court under Article 227 of the Constitution of India”?

6. In the affidavit filed in support of the application, the petitioners herein stated that the sole plaintiff executed nominal registered gift deeds in their favour while leaving to Mecca, in the light of the custom prevailing in their community and as the plaintiff was not hale and healthy before leaving to Mecca. It is also their case that the sole plaintiff returned from Mecca and the suit schedule property is in the possession and enjoyment of the sole plaintiff who is the head of the family and that there is no partition effected.

7. Resisting the said averments, a counter affidavit was filed, stating that the petitioners herein are neither proper nor necessary parties, nor they have got any right to claim title over the suit schedule property. In the

counter, the defendants also stated that the registered gift deeds executed by the plaintiff are only nominal and no possession was delivered to the proposed parties, nor the gift deeds were acted upon.

8. The learned Judge took note of the above said aspects of non-delivery of possession pursuant to the nominal gift deeds and inaction in acting on the same. The learned Judge also found that the petitioners herein have no right in the property nor they are entitled to claim right in the property during the lifetime of the plaintiff. The learned Judge also took note of the averment in the affidavit filed in support of the application that the gift deeds were executed only nominally. Since the plaintiff is actually participating in the suit and as the learned Judge elaborately and meticulously considered various aspects, this Court is not inclined to interfere with the order impugned. It is a settled and well established principle of law that unless the order impugned suffers from jurisdictional error or is patently wrong, invocation of the jurisdiction of this Court under Article 227 of the Constitution of India, is impermissible.

9. In view of the above reasons, this Court is not inclined to meddle with the well articulated order passed by the learned Judge and the C.R.P. is accordingly dismissed. However, it is made clear that uninfluenced by any observations made in the impugned order or in the present order, the suit shall be disposed of.

10. As a sequel to the dismissal of the C.R.P., miscellaneous petitions if any, stand dismissed as infructuous.

A.V.SESHA SAI, J

Date:05.01.2018
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Dated: 05.01.2018

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