

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.6982 OF 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 09.10.2017 passed in I.A.No.261 of 2015 in O.S.No.355 of 2011 on the file of the Court of the Principal Senior Civil Judge, Chittoor.

2. Sri K.Devanath, the learned counsel, has taken notice on behalf of the first respondent and Sri O.Udaya Kumar, the learned counsel, has taken notice on behalf of the second respondent.

3. Heard the learned counsel for both parties.

4. The point that arises for consideration is:

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

5. A perusal of the record reveals that the petitioner filed O.S.No.355 of 2011 on the file of the Court of the Principal Senior Civil Judge, Chittoor, against respondent Nos.1 and 2 for specific performance of agreement of sale dated 07.09.2009. During pendency of the suit, the petitioner filed I.A.No.261 of 2015, under Order I Rule 10 C.P.C., to implead the third respondent as third defendant in the main suit. The respondents filed counter *inter alia* contending that the proposed party is not necessary and proper party to the suit; therefore, the petition is liable to be dismissed. The trial Court dismissed the petition. Hence, the revision.

6. It is the case of the petitioner that she filed O.S.No.355 of 2011 on 08.08.2011 against respondent Nos.1 and 2 seeking the relief of specific performance. During pendency of the suit, she came to know that respondent Nos.1 and 2 executed a sale deed on 07.07.2011 in favour of the proposed respondent in respect of the suit schedule property. The factum of purchase of property by the proposed party from respondent Nos.1 and 2 is not being denied. If ultimately the suit is decreed in favour of the petitioner, the proposed party has to join as one of the parties to execute sale deed. In the absence of proposed party, it may not be possible for the Court to adjudicate the *lis* involved in the suit effectively. Viewed from any angle, the proposed party is a necessary and proper party to the suit. The trial Court has not considered the scope of Order I Rule 10 C.P.C. with reference to the material available on record. If the order of the trial Court is allowed to stand, certainly it would amount to miscarriage of justice. The trial Court dismissed the petition on untenable grounds.

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 set aside the impugned order.

8. In the result, the Civil Revision Petition is allowed setting aside the order dated 09.10.2017 passed in I.A.No.261 of 2015 in O.S.No.355 of 2011 on the file of the Court of the Principal Senior Civil Judge, Chittoor. Consequently, I.A.No.261 of 2015 is allowed. However, allowing of this revision does not preclude respondent Nos.1 and 2 to urge the point of limitation at appropriate stage of proceedings. 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: 21.12.2018
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