

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.326 of 2019

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.21-12-2018 in I.A.No.593 of 2018 in O.S.No.50 of 2012 of the Judge, Family Court-cum- VII Additional District and Sessions Judge, Mahabubnagar.

2. Petitioner herein is a third party to the suit.
3. The suit was filed by respondent Nos.16 to 34 against respondent Nos.1 to 15 for recovery of possession of the suit schedule property.
4. While the said suit was pending, the petitioner filed I.A.No.593 of 2018 to implead him as 16th defendant in the suit.
5. He contended that 16th respondent/1st plaintiff had filed O.S.No.344 of 1988 for partition and for possession of the suit schedule properties against petitioner and respondent Nos.1 to 15 before the Junior Civil Judge, Mahabubnagar and it was dismissed on 25-03-1998; thereafter 16th respondent filed A.S.No.47 of 1998 before the II Additional District Judge (FTC), Mahabubnagar and the said appeal was also dismissed on 27-10-2004; in the said appeal, petitioner was the 8th respondent; that 16th respondent then filed S.A.No.1548 of 2005 before this Court, which was also dismissed on 18-11-2011 and this Court granted liberty to 16th respondent to work

out her remedies to claim rights vis-à-vis the properties that are said to have been allotted to her share in the earlier partition.

6. He contended that thereafter the 16th respondent had filed the suit O.S.No.50 of 2012; and so the petitioner is also necessary party to this suit; and that 16th respondent deliberately did not implead him as a party with a *mala fide* intention to grab the suit schedule property. He contended that unless he is impleaded as a party, the suit itself would not be maintainable.

7. Counter-affidavit was filed by 27th respondent/12th plaintiff opposing impleadment of the petitioner.

8. He contended that the 16th respondent's mother, mother of deceased 1st respondent/1st defendant and deceased 2nd respondent/2nd respondent are own sisters and daughters of one Saibanna, who was allotted the suit lands; that Saibanna had 3 brothers viz., Ramudu, Chandrappa and Yankappa, who also got their shares along with Saibanna; that petitioner is the son of Chandrappa; thus, he is an agnate to the 16th respondent/1st plaintiff.

9. He alleged suit is filed only for recovery of possession of the suit property against the persons who are in possession of the same and from whom the lands are liable to be recovered; and since petitioner is not in possession of any of the suit lands, he is neither a proper nor necessary party to the suit. It was pointed out that in the previous litigation, no relief was granted to the 16th respondent on the ground

that the suit lands were already partitioned and that the suit filed by her for partition was not maintainable and she has to avail remedy of recovery of possession of the lands allotted to her; and that was why the 16th respondent had filed the suit for recovery of possession of her share in the lands.

10. By order dt.21-12-2018, the Court below dismissed the said I.A. It held that the petitioner is none other than the son of one of the brothers of the father of 16th respondent/1st plaintiff; that petitioner is an agnate of 16th respondent living in the same village; even assuming that they live in different villages, information of the suit filed in 2012 cannot be said to have been unknown to the petitioner particularly when parties had an earlier round of litigation which went up to High Court; and after 6 years of its filing at the stage when the suit is posted for cross-examination of P.W.1, petitioner cannot be impleaded. It also held that petitioner did not place any material on record to show that the relief in the suit has any bearing on his lands except making a bald assertion in his affidavit that he is a necessary party, that he also did not indicate that he has any legal interest in the subject matter of the suit and it cannot be effectually and completely adjudicated upon unless he is impleaded as a party in the suit.

11. Assailing the same, this Revision is filed.

12. Learned counsel for the petitioner contended that petitioner was a party to the litigation O.S.No.344 of 1988 filed by 16th respondent for

partition and separate possession against him and others, which ended ultimately in the High Court in S.A.No.1548 of 2005, and the 16th respondent ought to have impleaded him in O.S.No.50 of 2012 also and that he is a necessary party to the suit.

13. Admittedly, the suit O.S.No.344 of 1988 filed by 16th respondent for partition and possession of the suit schedule properties against petitioner and respondent Nos.1 to 15 was dismissed holding that there was a previous partition and she was allotted a share, and so the said suit was not maintainable. She was permitted to sue for recovery of her share of properties and workout her claim vis-à-vis properties which are allotted to her share in the earlier partition. This was confirmed in S.A.No.1548 of 2005 on 18-11-201. That was why the 16th respondent filed O.S.No.50 of 2012 for recovery of suit schedule properties from respondent Nos.1 to 15.

14. No where in the affidavit filed in respect of implead application has the petitioner stated that he is in possession of any of the properties which have been claimed by 16th respondent/1st plaintiff and other plaintiffs. He cannot simply seek impleadment in the suit without establishing that he is going to be affected by the outcome of the suit since admittedly respondent Nos.16 to 34/plaintiffs are not seeking recovery of possession of his land.

15. Therefore, the Court below had rightly held that petitioner is neither necessary nor proper party to the suit and he seems to have

filed the implead petition only with a motive to drag on the proceedings at the belated stage of 6 years after filing of the suit when the suit is coming for cross-examination of P.W.1.

16. Therefore, I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

17. Accordingly, the Civil Revision Petition fails and it is dismissed.
No costs.

18. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 12-03-2019
Vsv

