

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.399 of 2019

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.27-12-2018 in I.A.No.353 of 2017 in O.S.No.146 of 2005 of the Junior Civil Judge at Vemulawada, FAC Principal Junior Civil Judge, Sircilla.

2. Respondent Nos.1 to 5 filed the said suit against respondent No.6 and 7 for a perpetual injunction restraining respondent Nos.6 and 7 from interfering with their alleged peaceful possession and enjoyment of the plaint schedule property.

3. Respondent Nos.1 to 5 claimed that they purchased the said property under a registered sale deed from the 7th respondent executed on 13-10-1997. They contended that they are in possession and enjoyment of the plaint schedule property and respondent Nos.6 and 7 are interfering with their possession and enjoyment of the suit schedule property.

4. Petitioners herein had filed O.S.No.134 of 2009 before the Junior Civil Judge, Sircilla against respondent Nos.1 and 7 to declare the sale deed dt.13-10-1997 executed by 7th respondent in favour of 1st respondent as null and void. The petitioner and 7th respondent are admittedly brothers.

5. Petitioner then filed I.A.No.353 of 2017 in O.S.No.146 of 2005 under Order I Rule 10 C.P.C. to implead him as 3rd defendant therein alleging that the 7th respondent had in fact purchased the property on 07-01-1995 jointly with petitioner and other brothers, though the document is only in the name of 7th respondent; that he had already filed O.S.No.44 of 2014 (O.S.No.134 of 2009) for declaration that the sale deed dt.13-10-1997 is invalid; that the 7th respondent had executed a simple agreement dt.25-09-1997 in favour of the family members admitting that the suit schedule property is a joint family property and also promised to cancel the sale deed dt.13-10-1997; and to avoid legal complications, he must be impleaded.

6. Counter-affidavit was filed by respondent Nos.1 and 3 to 5 opposing this application. They contended that the suit schedule property was not a joint family property and it was the exclusive property of 7th respondent; 4 years after filing of O.S.No.146 of 2005, petitioner filed O.S.No.134 of 2009 (O.S.No.44 of 2014) to declare the sale deed dt.13-10-1997 as null and void; the said suit is also barred by limitation; and the documents relied upon by petitioner were brought into existence to defeat the rights of the respondent Nos.1 and 3 to 5.

7. By order dt.27-12-2018, the Court below dismissed I.A.No.353 of 2017. It held that the suit is one for bare injunction in which there is no allegation against petitioner and merely because the petitioner claims some right in the plaint schedule property, he cannot be

impleaded since the result in O.S.No.146 of 2005 will not in any way affect the petitioner since he had already filed O.S.No.44 of 2014 against the respondents.

8. Assailing the same, this Revision is filed.

9. Learned counsel for petitioner contended that the subject matter of both suits is one and the same, that grave prejudice would be caused to the petitioner if he is not impleaded in the suit O.S.No.146 of 2005 since 7th respondent had no authority to sell the suit schedule property.

10. It is not in dispute that the document dt.13-10-1997 was executed by the 7th respondent in favour of 1st respondent and O.S.No.44 of 2014 was filed by petitioner to set it aside contending that the property is the joint family property and such a sale deed could not have been executed by 7th respondent. The question whether the property is a joint family property or not has to be decided in the said suit.

11. In the instant suit O.S.No.146 of 2005, the only question is whether respondent Nos.1 to 5 are in possession of the plaint schedule property on the date of filing of the suit and whether they are entitled to perpetual injunction against respondent Nos.6 and 7 or not. The title to the property can only be incidentally gone into in the suit for bare injunction.

12. Petitioner cannot be impleaded in O.S.No.146 of 2005 and if he is impleaded, the suit would be converted from one for bare injunction into a suit where the question as to whether the property is joint family property or self-acquired property, arises. It would then change the cause of action in the suit also.

13. In my opinion, any decision rendered in O.S.No.146 of 2005 will not affect the petitioner or having bearing in O.S.No.146 of 2005 and so petitioner need not be impleaded in O.S.No.146 of 2005 at this belated stage.

14. 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.

15. Therefore, the Civil Revision Petition fails and it is dismissed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 14-03-2019

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