

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P. Nos.743 & 681 of 2019

COMMON ORDER:

These two Revisions arise between the same parties out of the same issue, so they are being disposed of by this common order.

2. The 1st respondent filed the suit O.S.No.376 of 2011 against the 2nd respondent for specific performance of an agreement of sale dt. 19.09.2008 executed in favour of the 1st respondent by the 2nd respondent in respect of immovable property.

3. Subsequently, alleging that the 2nd respondent is having only an agreement of sale-cum-General Power of Attorney (GPA) dt. 05.06.2007 from the father of the petitioner, who is the original owner of the property, the 1st respondent filed I.A.No.2159 of 2017 to implead the father of the petitioner.

4. In that application, the 2nd respondent filed a Memo stating that petitioner's father died on 12.12.2010, so the said I.A. was dismissed on 14.02.2018.

5. Thereafter, the 1st respondent filed I.A.No.1028 of 2018 to implead the petitioner as 2nd defendant in the suit, alleging that the presence of the petitioner is necessary because it would be difficult to obtain a decree in favour of the 1st

respondent because there was only an agreement of sale in favour of the 2nd respondent from the father of the petitioner.

6. Petitioner remained ex-parte in the said I.A. and the 2nd respondent did not file any counter.

7. By order dt. 05.07.2018, the Court below allowed the said I.A. It held that petitioner is a necessary and proper party to the suit since the application to implead her father was dismissed on account of his death and the 2nd respondent has claimed that he obtained an agreement of sale-cum-GPA from the petitioner's father only.

8. Assailing the same, the petitioner has filed Civil Revision Petition No.743 of 2019.

9. Counsel for the petitioner contended that after the trial has concluded and the matter is at the stage of arguments, belatedly 1st respondent filed an application to implead petitioner as party to the suit and the suit against the petitioner is barred by limitation and no amendments to the body of the plaint have also been sought by the 1st respondent.

10. In my considered opinion, when the 2nd respondent is claiming to have purchased under agreement of sale-cum-GPA dated 05.06.2007 from the father of the petitioner and the father of the petitioner died on 28.12.2010, since title to

the property continues with the petitioner and other legal heirs, petitioner would be a necessary and property party to the suit since otherwise, the 1st respondent, even if he succeeds in the suit, will not be able to obtain effective title to the property. Therefore, the impleadment of the petitioner in the suit cannot be said to be erroneous.

11. However, after the impleadment, the petitioner would be entitled to file a written statement seeking framing of additional issues, recall the witnesses examined by the respondent and cross-examine them if she so chooses and also lead evidence on her own behalf on all aspects including the defense raised by the counsel for the petitioner.

12. With the above observations, **Civil Revision Petition No.743 of 2019** is dismissed.

13. Coming to Civil Revision Petition No.681 of 2019, petitioner filed an application under Order 7 Rule 11 to reject the plaint on the ground that there is no cause of action against her. Petitioner is only now impleaded as 2nd defendant in the suit.

14. As regards the original defendant, it cannot be said that there is no cause of action to file the suit. Therefore, at the instance of the petitioner, the plaint cannot be rejected in part as against the petitioner, since there cannot be any piecemeal rejection of the plaint.

15. I, therefore, do not find any merit in CRP.No.681 of 2019, wherein the order dt. 29.01.2019 in I.A.No.2917 of 2018 in O.S.No.376 of 2011 is challenged by which the Court below refused to reject the plaint at the instance of the petitioner.

16. Accordingly, **Civil Revision Petition No.681 of 2019** is dismissed.

17. Consequently, miscellaneous petitions pending, if any, in both the Revisions, shall stand dismissed. No order as to costs in both the Revisions.

M.S.RAMACHANDRA RAO, J

02.04.2019
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