

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.1036 of 2019

ORDER :

This Revision is filed challenging the order dt.14-03-2019 in I.A.No.1330 of 2018 in O.S.No.41 of 2009 of the Principal District Judge at Mahabubnagar.

2. Petitioner herein is the legal representative of the original plaintiff and one of the sons of the original plaintiff.
3. The suit was filed by the original plaintiff against a third party for declaration of title and for perpetual injunction in the year 2009.
4. Respondent Nos.9 and 10 herein filed I.A.No.1330 of 2018 under Order I Rule 10(2) C.P.C. claiming that the original plaintiff had another son by name Sathaiah, that they are the children of Sathaiah and under a registered Will dt.29-11-2010, which came into force after the death of the original plaintiff on 23-05-2011, the suit schedule property was bequeathed to them and so they became also owners of the suit schedule property.
5. Petitioner and another filed counter opposing the said application disputing the validity of the Will, and contending that it was obtained by impersonation and fraud. They contended that respondent Nos.9 and 10 have to file a separate suit and establish the

validity of the Will and when the matter is posted for defendants' evidence, they cannot be impleaded.

6. By order dt.14-03-2019, the Court below allowed the said application for impleadment filed by respondent Nos.9 and 10 on payment of costs of Rs.1000/-. It observed that the question whether the Will has been brought into existence by committing forgery or impersonation and fraud are the aspects which have to be agitated during the course of trial; but when they are claiming to be owners of the suit schedule property under the said Will, there may be problems if ultimately the suit is decreed, and there may be obstruction for execution of the decree which might be passed by the Court. It also observed that in view of the fact that the suit was filed in the year 2009 and Will was executed in 2010, respondent Nos.9 and 10 should have filed application for impleadment much earlier and for the delay in approaching the court, they should pay costs.

7. Challenging the same, this Revision is filed.

8. Learned counsel for petitioner contends that the Court below ought to have gone into the question of validity of the Will before allowing respondent Nos.9 and 10 to come on record and since it has not done so, its order is liable to be set aside.

9. It is not in dispute that the original plaintiff died. Petitioner claims to be the son of the original plaintiff. It is also not in dispute that the original plaintiff had filed the suit against a third party seeking

the relief of declaration of title and perpetual injunction. Respondent Nos.9 and 10, by getting them impleaded in the suit, would also be supporting the petitioner in opposing the claim of respondent Nos.3 to 5 who are defendants in the suit. In fact the father of respondent Nos.9 and 10 by name Sathaiah had already been impleaded as party in the suit.

10. Merely because respondent Nos.9 and 10 are now impleaded as parties to the suit on the basis of the Will set up by them, that does not mean that in this suit, the *inter se* dispute between petitioner and respondent Nos.9 and 10 regarding the validity of the Will would have to be decided, since all of them are only contesting the suit against respondent Nos.3 to 5 who are the original defendants in the suit.

11. I am of the opinion that there is no necessity for the Court below to give any finding on the validity of the Will set up by respondent Nos.9 and 10 particularly when they are also contesting only against respondent Nos.3 to 5. Otherwise the suit against respondent Nos.3 to 5 would get converted into a suit not only for the said purpose but also as one to decide the *inter se* dispute between petitioner and respondent Nos.9 and 10.

12. Therefore I see no reason to interfere with the order of impleadment of respondent Nos.9 and 10 as defendant Nos.7 and 8 in the suit.

13. Accordingly the Civil Revision Petition fails and is dismissed at the stage of admission. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 25-06-2019

Vsv

