

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition Nos.2359;

I.A.No.1 of 2018 in Civil Revision Petition No.5254 of 2018

and

Civil Revision Petition No.5254 of 2018

COMMON ORDER :

Since these two Civil Revision Petitions arise out of the same suit between the same parties, they are therefore being disposed of by this Common order.

2. Heard the Counsel for petitioners in both the Civil Revision Petitions, and Sri Bankatlal Mandani, counsel for respondent nos.1 to 5 in both the Civil Revision Petitions.

3. The other respondents, it is stated by both sides, are not necessary parties.

Civil Revision Petition No.2359 of 2018 :

4. This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.31.01.2018 passed in I.A.No.122 of 2017 in O.S.No.67 of 2011 on the file of III Additional District Judge (Full Additional Charge)-cum-IV Additional District Judge, Warangal.

5. The respondent nos.1 to 5 had filed O.S.No.67 of 2011 on the file of III Additional District Judge (Full Additional Charge)-cum-IV Additional District Judge, Warangal for partition of the plaint

schedule properties and for separate possession of 1/6th share therein and for other reliefs.

6. Pending suit, the respondent nos.1 to 5 filed I.A.No.122 of 2017 to implead the petitioner herein as 12th defendant in the suit alleging that one of the joint family properties was sold to him under a registered Document No.4420 of 2003 without any legal necessity or family benefit and so he was a necessary and property party to the suit.

7. The petitioner filed counter opposing the same, and contending that he is not a necessary or proper party and any challenge to his sale deed is hopelessly barred by limitation.

8. Ignoring the counter-affidavit filed by petitioner, the Court below allowed I.A.No.122 of 2017.

9. Challenging the same, the petitioner filed Civil Revision Petition No.2359 of 2018.

10. The counsel for petitioner contended that I.A.No.122 of 2017 has been allowed by the Court below without considering the petitioner's opposition to the same, and without considering the contents of the counter-affidavit filed by petitioner; and so, the order requires to be set aside.

11. The counsel for respondent did not dispute that the Court below did not consider the contents of the counter filed by the petitioner before disposing of I.A.No.122 of 2017.

12. Accordingly, the Civil Revision Petition No.2359 of 2018 is allowed. The order dt.31.01.2018 passed in I.A.No.122 of 2017 in O.S.No.67 of 2011 on the file of III Additional District Judge (Full Additional Charge)-cum-IV Additional District Judge, Warangal is set aside; and the said I.A. is remanded back to the said Court to pass a fresh order in accordance with law after considering the contentions of petitioner as well as respondent nos.1 to 5. No order as to costs.

Civil Revision Petition No.5254 of 2018 :

13. This Revision is filed under Article 227 of the Constitution of India challenging the order dt.14.02.2018 passed in I.A.No.395 of 2017 in O.S.No.67 of 2011 on the file of IV Additional District Judge (Full Additional Charge), Warangal.

14. The respondent nos.1 to 5 have filed the said application, viz., I.A.No.395 of 2017, for amendment of the plaint invoking Order VI Rule 17 of Civil Procedure Code, 1908 challenging the transaction under which the petitioner had purchased one of the properties alleged to be joint family properties of the family of the respondent nos.1 to 5 and other respondents.

15. The petitioner herein was not even impleaded in the said I.A., and therefore, did not have any opportunity to contest the suit. But the Court below allowed it on 14.02.2018.

I.A.No.1 of 2018 in Civil Revision Petition No.5254 of 2018 :

16. I.A.No.1 of 2018 in Civil Revision Petition No.5254 of 2018 was filed by petitioner herein seeking leave of the Court to challenge the said order in I.A.No.1 of 2018 contending that he is the affected party, and behind his back the said order could not have been passed.

17. Since the record reveals that the petitioner is not made a party in I.A.No.395 of 2017 and he is likely to be affected if the order passed therein by the Court below is allowed to stand, I.A.No.1 of 2018 in Civil Revision Petition No.5254 of 2018 is allowed. The petitioner is granted leave to file the present Civil Revision Petition.

18. Since admittedly, the petitioner had not been heard before the I.A.No.395 of 2017 was allowed by the Court below and he was not even given an opportunity to contest it by the Court below, the said order cannot stand.

19. Accordingly, the Civil Revision Petition No.5254 of 2018 is allowed. The order dt.14.02.2018 passed in I.A.No.395 of 2017 in O.S.No.67 of 2011 on the file of IV Additional District Judge (Full Additional Charge), Warangal is set aside; and the said I.A. is remanded back to the Court below. The Court below shall direct respondent nos.1 to 5 to implead the petitioner in the said I.A., give

opportunity to the petitioner to file counter to the said I.A., after his impleadment and then decide the same in accordance with law.

20. Accordingly, I.A.No.1 of 2018 in Civil Revision Petition No.5254 of 2018 and Civil Revision Petition No.5254 of 2018 are both allowed. No order as to costs.

21. As a sequel, miscellaneous petitions pending if any in these Civil Revision Petitions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 22.04.2019

Ndr/*

