

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P. No.1854 OF 2017

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.19.10.2016 in I.A.No.513 of 2015 in A.S.No.6 of 2014 of the Family Court-cum-VIII Additional Sessions Judge, Mahabubnagar.

2. Petitioner is the plaintiff in the above suit. He filed the said suit for declaration of title and recovery of possession of an extent of Acs.4-36 gts of land in survey No.30/E of Karkalpahad village, Amangal Mandal, Mahabubnagar District.

3. Petitioner contended that in a family partition, which took place 50 years prior to the filing of the suit, the above said land fell to the share of Jathya, brother of Bania and petitioner is the son of Jathya through his wife Pipli.

4. The respondents took a plea that the family partition itself took place 50 years back between Jathya and his three brothers and the suit schedule property did not fall to the share of Jathya in that family partition. They contended that Jathya and Bania, brother of Jathya, had purchased the said land out of their joint income from its original owner, Suda Sivaiah.

5. By judgment and decree dt.22.04.2014, the trial Court dismissed the suit. It held that the petitioner failed to prove that the suit schedule property fell to the share of Jathya in the family partition which took place 50 years prior to the filing of the suit, and in any event certain portions of the land claimed by the petitioner was in possession of the third parties, who had not been impleaded, and therefore the suit is bad for non-joinder of necessary parties.

6. Challenging the same, petitioner filed A.S.No.6 of 2014 before the Family Court-cum-VIII Additional Sessions Judge, Mahabubnagar.

7. Petitioner also filed I.A.No.513 of 2015 under Order 1 Rule 10 CPC claiming that the 1st defendant/1st respondent in the appeal sold Acs.3-00 gts of land in the said survey number under a registered sale deed of 1986 to one Ketavath Bhadya S/o Amru; that later Bhadya died in January, 2014 and his legal representatives sold under registered Sale Deed dt.28.01.2015 Ac.0-20 gts each to respondents 14 and 15; that the alleged purchasers were not put in possession, but they are trying to enter into the possession of the property; that the 1st respondent had no right to alienate the land. He therefore wanted to implead respondents 9 to 15 as parties in the appeal stating that they are necessary parties.

8. Though the respondents did not file any counter, the Court below dismissed the said application.

9. It held that petitioner had filed I.A.No.269 of 2010 under Order I Rule 10 CPC in the trial Court for adding respondents 9 to 11, that it was dismissed and it bars the present application for adding respondents 9 to 15. It observed that while dismissing the said I.A.No.269 of 2010, the trial Court held that no record was placed that respondents 9 to 11 are third party purchasers and there were only mere averments in the said I.A., that during the life time of the 1st respondent, he had alienated part of the suit land.

10. Assailing the same, this Revision is filed.

11. Admittedly, the suit has been filed in the year 2004 for declaration of title and recovery of possession by the petitioner for the above extent of Acs.4-36 gts of land.

12. Now for the first time, he is stating in the I.A.No.513 of 2015 that part of the said land was alienated by the 1st respondent under a registered sale deed No.1394 of 1986 to Ketavath Bhadya (Ac.3.00 gts); this was later partitioned among Bhadya and his brother-9th respondent; that the 1st respondent then sold Ac.1-00 gts to 10th respondent orally

and made a statement before the Revenue Officials, and the remaining Ac.0-36 gts., was gifted by the deceased-1st respondent on 16.08.2007 to respondents No.2, 4, 6 & 7.

13. According to him, a portion of the land, which was sold by the 1st respondent to Ketavath Bhadya, is now sold by his wives and daughter i.e., respondents No.11, 12 & 13 to respondents 14 & 15.

14. Since the transactions relating to Acs.3-00 gts, which forms part of the suit schedule property even according to the petitioner, occurred in 1986 long prior to the filing of the suit, at this point of time petitioner cannot be permitted to implead respondents 9 to 15 at this stage, particularly, when I.A.No.269 of 2010 filed by him to implead respondents 9 to 11 in the trial suit itself, was rejected.

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

16. Accordingly, this Civil Revision Petition fails and it is dismissed. No order as to costs.

17. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

12th March, 2019.
gra

