

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

CIVIL REVISION PETITION NO.3248 OF 2018

ORDER:

This Revision is filed under Article 227 of the Constitution of India, challenging the order, dt.31.01.2018 in I.A.No.301 of 2015 in O.S.No.107 of 2014 on the file of the XVI Additional District and Sessions Judge-cum-XVI Additional Metropolitan Sessions Judge, Ranga Reddy District at Malkajgiri.

2. The petitioner herein is the 2nd plaintiff in O.S.No.107 of 2014 on the file of the said Court. The said suit was filed by the petitioner and 7th respondent for partition of the suit schedule property mentioned therein seeking 1/6th share to each of them and to the other respondents.

3. Their contention is that the suit schedule property is a joint family property, that the 1st petitioner and respondents 7 to 11 are coparceners in a joint Hindu family, that they demanded for partition on 05.01.2014, but it was not acceded to and so, they filed the suit.

4. Pending the said suit, respondents 1 to 6 filed I.A.No.301 of 2015 invoking Order I Rule 10 CPC to get impleaded in the suit.

5. It is their contention in the said I.A. that respondents 7, 8 and 9 grabbed Ac.0.35 guntas in Sy.No.138/A/EE and Ac.0.17 guntas in Sy.No.139/AA/3 in Dhulapally village, Qutubullapur Mandal, R.R. District, forming part of Ac.3.00 of land in Sy.No.138/A/EE and Ac.2.15 guntas in Sy.No.139/AA/3 and L.G.C.No.92 of 2013 has been filed before the A.P. Land Grabbing (Prohibition) Act, 1982 at Hyderabad, against them and other parties also. They contended that they came to know that the petitioner and the

7th respondent had filed O.S.No.107 of 2014 for partition and separate possession of the property including the land admeasuring Ac.0.35 guntas in Sy.No.138 in collusion with each other for wrongful gain with a view to create multiplicity of litigation in respect of the said land suppressing the filing of L.G.C. and also pendency of case under A.P. Telangana Area Inam Abolition Act, 1955 in respect of the said land. They contended that no Occupancy Right Certificate had been granted to the 7th respondent herein and there is no right to partition the property unless re-grant is made. It is contended that if they are not impleaded in the suit, there would be serious prejudice and so, they should be impleaded.

6. The petitioner and 7th respondent filed counter opposing the same. They contended that the respondents 1 to 6 have nothing to do with the suit schedule property and that it is ancestral property of the petitioner and the respondents 7 to 11. They stated that if the respondents 1 to 6 have any grievance about their right, they can agitate in a separate proceedings. They also contended that the property claimed by the respondents 1 to 6 does not form part and parcel of the suit schedule property. They admitted that L.G.C.92 of 2013 is pending before the Special Court constituted under A.P. Land Grabbing (Prohibition) Act, 1982, in which claim is made by the respondents 1 to 6 in regard to Ac.0.35 guntas of land in Sy.No.138/A/EE and Ac.0.17 guntas in Sy.No.139/AA/3.

7. By order, dt.31.01.2018, the Court below allowed the said application. It observed that the scope of the application is limited and the Court cannot decide the rights of the parties and since respondents 1 to 6 are alleging that they are having right over the suit schedule property, they ought to be impleaded as defendants in the suit and the rights of the parties can be decided in the suit.

8. Assailing the same, this Revision is filed.

9. It is the contention of the learned counsel for the petitioner that in a suit for partition between the petitioner and respondents 7 to 11, third parties like respondents 1 to 6 cannot be impleaded and since L.G.C.No.92 of 2013 is pending, any right of the respondents 1 to 6 in respect of lands in Sy.Nos.138/A/EE and 139/AA/3 can not be decided in the suit proceedings.

10. Learned counsel for the respondents refuted the said contention and supported the order passed by the Court below. He contended that after L.G.C. is filed, to complicate the matter, the petitioner and the 7th respondent have filed the suit O.S.No.107 of 2014 deliberately without impleading respondents 1 to 6 and to create complications to them. He contended that they were rightly impleaded by the Court below.

11. From the facts narrated herein, it is clear that O.S.No.107 of 2014 filed by the petitioner and the 7th respondent against the respondents 8 to 11 is a suit for partition. The subject matter of the said suit is an extent of Ac.0.13 guntas in Sy.No.138/A/EE apart from other properties.

12. This Sy.No.138/A/EE is also subject matter of L.G.C.No.92 of 2013 filed by the respondents 1 to 6 against some of the respondents.

13. It is the contention of the respondents 1 to 6 that the land admeasuring Ac.3.00 in Sy.No.138/A/EE belongs to them.

14. In **RANGAMMAL V KUPPUSWAMI AND ANOTHER**¹, it was held as under (Para 31):

¹ AIR 2011 SC 2344

“It hardly needs to be highlighted that in a suit for partition, it is expected of the plaintiff to include only those properties for partition to which the family has clear title and unambiguously belong to the members of the joint family which is sought to be partitioned and if someone else's property meaning thereby disputed property is included in the schedule of the suit for partition, and the same is contested by a third party who is allowed to be impleaded by order of the trial court, obviously it is the plaintiff who will have to first of all discharge the burden of proof for establishing that the disputed property belongs to the joint family which should be partitioned excluding someone who claims that some portion of the joint family property did not belong to the plaintiff's joint family in regard to which decree for partition is sought.”

15. When there is a serious claim raised by the respondents 1 to 6 that the land in Sy.No.138/A/EE does not belong to the joint family of the petitioner and the respondents 7 to 11, and rival title is being set up by them, if the respondents 1 to 6 are not impleaded, there is possibility of causing prejudice to them.

16. Therefore, in the light of the above decision of the Supreme Court, I am of the opinion that the respondents 1 to 6 have been rightly impleaded in the suit to contest the claim of the petitioner and the respondents 7 to 11 that the property is their ancestral property.

17. I, therefore do not find any error of jurisdiction in the order passed by the Court below, warranting interference of this Court under Article 227 of the Constitution of India and hence, the Revision fails and is liable to be dismissed.

18. Accordingly, the Civil Revision Petition is dismissed at the stage of admission. No order as to costs. Miscellaneous petitions, if any pending in this Revision shall stand closed.

M.S.RAMACHANDRA RAO, J

DATED: 09-08-2019
Hsd