

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

CRP. No.5743 of 2012

ORDER:

This Revision is filed assailing the order dt.08.10.2012 passed in I.A. No.1721 of 2011 in O.S. No.845 of 2010 by the VIII Additional District and Sessions Judge at L.B.Nagar, R.R.District.

2. The petitioner herein is the plaintiff in the said suit.
3. The petitioner filed the said suit against the 2nd respondent for foreclosure of the mortgage deed dt.04.03.1998 and recovery of possession etc.
4. While the said suit was pending, the 1st respondent herein filed I.A. No.1721 of 2011 to implead himself as the 2nd defendant in the suit.
5. It is not in dispute that originally the property, which is the subject matter of the suit, was co-owned by the 1st respondent along with others and it is alleged in the plaint filed in O.S.No.845 of 2010 that there were development agreements executed on 25.02.1993 in favour of the petitioner by the 1st respondent and others and later there were transactions between the petitioner and the 2nd respondent, one of which is the mortgage deed dt.04.03.1998 on the basis of which this suit was filed.

6. In the I.A. No.1721 of 2011 it is the case of the 1st respondent that the Development Agreement/General Power of Attorney had been cancelled and so the title continues to be with the 1st respondent as a co-owner of the suit schedule property, that O.S. No.1506 of 2005 had already been filed by the 1st respondent against the petitioner and others for declaring the Development Agreement dt.25.02.1993 and GPA dt.18.03.1993 has no legal validity and unenforceable and also to annul certain sale deeds executed by the petitioner.

7. The 1st respondent therefore, contended that it is necessary to implead him in the suit since the petitioner has no right, title or interest in the suit property.

8. Counter affidavit was filed by the petitioner opposing the impleadment of the 1st respondent.

9. He contended that O.S. No.1506 of 2005, which has been re-numbered as O.S.No.399 of 2010 has a different plaint schedule property from the instant suit and the 1st respondent was not a necessary or proper party to the instant suit.

10. By order dt.08.10.2012, the Court below allowed the I.A. No.1721 of 2011 observing that the 1st respondent is justified for claiming that he is a necessary party since he has an intrinsic interest in the suit property by virtue of being an original owner of the same, and the questions raised by him regarding the eligibility of the

petitioner to deal with the suit schedule property, are required to be gone into in the suit.

11. Assailing the same, this Revision is filed.

12. Counsel for the petitioner firstly contended that no document has been filed before the Court below by the 1st respondent to show that the GPA executed in favour of the petitioner had ever been cancelled by the 1st respondent.

13. This contention is without merit because in O.S. No.1506 of 2005, along with plaint the document dt.18.08.1999 canceling the GPA allegedly executed in favour of the petitioner is filed, and the petitioner has been impleaded as 1st defendant in the said suit. Therefore, the petitioner cannot dispute that there is such a document although whether the said document would affect the transactions entered into by the petitioner with the 2nd respondent and others, is a matter to be gone into, and on which, no opinion can be expressed at this stage.

14. Counsel for the petitioner further contended that in a suit for foreclosure of mortgage, impleadment of the 1st respondent would change the nature of the suit and therefore impleadment ought not to be allowed. When the capacity of the petitioner to deal with the suit schedule property is itself in doubt, it cannot be said that impleadment of the 1st respondent cannot be done.

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

16. Accordingly, this Revision fails and is dismissed. There shall be no order as to costs. However, the Court below shall endeavor to expedite the disposal of the suit.

17. As a sequel, miscellaneous applications, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 27.06.2019
LSK

