

*** THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

+ Civil Revision Petition No.4227 of 2018

% Dated 22.10.2019

M/ s.Margadarshi Housing and Finance
Private Limited

... Petitioners

Vs.

\$ Sidagoni Balraj and others

..Respondents

! **Counsel for the Petitioner:** Sri B. Nalin Kumar

^ **Counsel for the Respondents:** Sri A. Keshava Reddy
for R1 to R13
Sri P.Guru Prasad
for R14.

> HEAD NOTE:

? Cases referred

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Civil Revision Petition No.4227 of 2018

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner/defendant No.21, challenging the order, dated 04.06.2018, passed in I.A.No.848 of 2017 in O.S.No.1683 of 2010, by the VIII Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, whereby, the petition filed by the respondents Nos.1 to 13 herein/implead petitioners to come on record as defendants 22 to 34 in the Original Suit, was allowed.

2. Head the learned counsel for both sides and perused the record.

3. The learned counsel for the petitioner/defendant No.21 would contend that the Court below allowed the subject interlocutory application on the ground of pendency of the suit in O.S.No.292 of 1998 on the file of the I Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar. However, the said suit was dismissed in the year 2005 and it is not restored yet. The respondents 1 to 13/proposed defendants 22 to 34 did not file a single document to show that they have substantial interest in the subject matter of the suit filed for partition and separate possession among the plaintiff and the defendants 1 to 21. When a comprehensive suit is filed in O.S.No.292 of 1998

on the file of the I Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, the proposed defendants 22 to 34 ought to have pursued that suit. They are not necessary parties to the subject suit in O.S.No.1683 of 2010. Further, any decree that is passed in between the plaintiff and the defendants 1 to 21 would not bind the proposed defendants 22 to 34. It is further contended that without adverting to the facts and circumstances of the case, the Court below erroneously permitted the proposed defendants 22 to 34 to come on record as defendants in the subject suit and ultimately prayed to set aside the order under challenge and dismiss the subject interlocutory application in I.A.No.848 of 2017 in O.S.No.1683 of 2010 on the file of the VIII Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar.

4. On the other hand, the learned counsel for the respondent Nos.1 to 13/proposed defendants 22 to 34 would contend that the proposed defendants 22 to 34 are the agnates of the plaintiff and the defendants 1 to 20. They have one third share in the suit schedule property and they are in possession of the same. There are documents such as pahanies etc., demonstrating that the proposed defendants 22 to 34 are in possession of the suit schedule property, as contended by them. The proposed defendants 22 to 34 have substantial interest in the subject matter of the suit. Even if the evidence is recorded, they are

necessary parties to the suit. The Court below is justified in passing the impugned order and ultimately prayed to dismiss the Civil Revision Petition by sustaining the order under challenge.

5. In view of the submissions of both the sides, the point that arises for consideration in this Civil Revision Petition as follows:

“Whether the order, dated 04.06.2018, passed in I.A.No.848 of 2017 in O.S.No.1683 of 2010, by the VIII Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, is liable to be set aside”

6. Admittedly, the subject suit in O.S.No.1683 of 2010 is filed by the plaintiff (respondent No.14 herein) for partition of the suit schedule property and separate possession in between the plaintiff and the defendants 1 to 21. It is incumbent upon the plaintiff to make all the interested persons as parties to the suit, for complete and effective adjudication of the subject matter of the suit. In the instant case, the proposed defendants 22 to 34 are claiming one third share in the suit schedule property. Further, they are also claiming to be in possession of the same. Further, they contend that their names are reflected in the pahanies as owners and possessors of the suit schedule property. Further, they are agnates of the plaintiff and the defendants

1 to 20 and they have substantial interest in the subject matter of the suit. In O.S.No.292 of 1998 on the file of the I Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, they have made some of the defendants herein as well as the father of the plaintiff herein as parties to the suit and filed a comprehensive suit for partition. However, the said suit was dismissed in the year 2005. There is nothing on record to demonstrate that the said suit was restored. Now the question is whether the dismissal of O.S.No.292 of 1998 on the file of I Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, would disable the proposed defendants 22 to 34 herein to come on record as parties to the subject suit in O.S.No.1683 of 2010. As indicated above, when a suit for partition is filed, it is incumbent upon the plaintiff to make all the interested persons as parties to the suit. In case of failure on the part of the plaintiff to do so, the interested persons are entitled to get impleaded as parties to the suit for partition, at any stage. Further, as per the averments in the affidavit filed in support of the subject interlocutory application in I.A.No.848 of 2017, the proposed defendants 22 to 34 have demonstrated that they have substantial interest in the subject matter of the suit. However, it is a disputed fact, which is required to be determined after due trial, including the relationship in between the plaintiffs, defendants and the proposed defendants. The Court below examined all the

contentions in detail and ultimately allowed the subject interlocutory application, as indicated above. The Court below neither committed any illegality nor exercised the jurisdiction which is not vested in it. Under these circumstances, the impugned order is sustainable. The Civil Revision Petition is devoid of merit and is liable to be dismissed.

7. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

Dr. SHAMEEM AKTHER, J

22nd October, 2019
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