

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

CRP.No.5699 of 2018

ORDER:

Heard counsel for the petitioner, Sri A.Veeresh Kumar, counsel for respondents 2 to 6, and Sri K.Ramachandra, counsel for 7th respondent.

2. This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.30.07.2018 in I.A.No.883 of 2018 in AS.SR.No.1356 of 2018 on the file of the XVI Additional District & Sessions Judge-cum-XVI Additional Metropolitan Sessions Judge, Ranga Reddy District at Malkajgiri.

3. The 1st respondent herein had filed O.S.No.1676 of 2006 (*old suit O.S.No.101 of 1995 on the file of the Junior Civil Judge, Ranga Reddy District at Medchal*) against respondents 7 to 9 for partition and separate possession of the plaint schedule property into six equal shares and for allotment of one such share to her.

4. Pending the suit, 1st respondent died on 19.08.2013 and respondents 2 to 6 were brought on record as her legal representatives.

5. While the suit was pending, the respondents 2 to 6 had filed an application under Order I Rule 10 CPC to implead the petitioner herein and her husband as defendants in the suit, but the said application was resisted by the petitioner and her husband and so, the said application got dismissed.

6. While the suit was still pending as O.S.No.101 of 1995 before the Junior Civil Judge, Medchal, Ranga Reddy District, petitioner and her husband filed I.A.No.1398 of 2004 to get impleaded in the suit.

7. The said application was dismissed by the trial Court on 13.05.2005.

8. Petitioner and her husband then questioned it in CRP.No.3201 of 2005.

9. The said CRP was dismissed on 23.02.2006 holding that earlier petitioners themselves had resisted impleadment by the plaintiffs and now they cannot do a volte-face and seek impleadment on the pretext that the 8th respondent is colluding with the 1st respondent. This Court observed that whether such collusion exists or not is to be decided in the trial and the petitioners in the Revision had not filed any documents to support their claim of having any interest in the suit schedule property. It also noted that the trial Court recorded that the petitioner and her husband had already filed OS.No.71 of 1996 before the I Additional Senior Civil Judge, Ranga Reddy District seeking injunctive relief against all the respondents in the Revision, and so they would not suffer any prejudice if they are not made parties to the suit. It therefore, confirmed the dismissal of I.A.No.1398 of 2004 by the trial Court.

10. Later, O.S.No.101 of 1995 which was pending on the file of the Junior Civil Judge, Medchal, Ranga Reddy District got transferred to the Court of VI Additional Senior Civil Judge, Medchal, Ranga Reddy District and got re-numbered as O.S.No.1676 of 2006.

11. After trial, the said suit was decreed on 10.11.2017.

12. Petitioner herein then filed I.A.No.883 of 2008 seeking leave to challenge the judgment and decree dt.10.11.2017 in OS.No.1676 of 2006 in an appeal ASSR.No.1356 of 2018 on the file of the XVI Additional District & Sessions Judge-cum-XVI Additional Metropolitan Sessions Judge, Ranga Reddy District at Malkajgiri.

13. The lower Appellate Court dismissed the said application on 30.07.2018 holding that previously I.A.No.1398 of 2004 had been dismissed on 13.05.2005 by the Junior Civil Judge, Medchal, Ranga Reddy District on the ground that an earlier application filed by the 1st respondent to implead the petitioner and her husband had been opposed by the petitioner and her husband, and got dismissed; that the dismissal of the said application had been confirmed by this Court in CRP.No.3201 of 2005 on 22.03.2006 and the order of the High Court became final and conclusive because no Special Leave Petition had been filed to appeal against the order of the High Court in CRP.No.3201 of 2005 by the petitioner. It observed that the petitioner is trying to

circumvent the orders passed by the trial Court in I.A.No.1398 of 2004, which had attained finality and became conclusive.

14. Assailing the same, this Revision is filed.

15. Counsel for the petitioner contended that the order passed by the Court below cannot be sustained; that the petitioner is affected by the decree passed on 10.11.2017 in O.S.No.1676 of 2006 by the Court of the VI Additional Senior Civil Judge, Medchal, Ranga Reddy District and grave prejudice would be caused to the petitioner, if the petitioner is not allowed to challenge the said judgment and decree, by grant of leave.

16. Counsel for the petitioner also relied upon an unreported judgment of the Madras High Court ***Tata Steel Limited Rep. by its Principal Officer, Titania Business Unit v. V.V.Minerals through its Partner, Mr.S.Vaikundarajan and Ors.***¹ in support of his contention.

17. Counsel for the 7th respondent opposed the said application and supported the order passed by the Court below.

18. From the facts narrated above, it is clear that in O.S.No.101 of 1995 filed by the 1st respondent before the Junior Civil Judge, Ranga Reddy District at Medchal, the 1st respondent/plaintiff herself sought to implead the Revision petitioner and her husband along with others as parties, and the said application was resisted

¹ Order dt.26.09.2008 in CRP(PD)(MD)No.1015 of 2008 and MP(MD) No.1 of 2008

by the petitioner and others and the application was dismissed. This is recorded in the first paragraph of the order dt.22.03.2006 in CRP.No.3201 of 2005 passed by this Court.

19. Later, I.A.No.1398 of 2004 filed by the petitioner and her husband to get impleaded in O.S.No.101 of 1995 was dismissed on 13.05.2005 on the ground that she and her husband earlier resisted their impleadment and cannot renege on their own earlier stand.

20. The order passed on 13.05.2005 was confirmed in CRP.No.3201 of 2005.

21. One of the reasons why a party is sought to be impleaded in a suit either at the instance of the plaintiff or at the instance of the said third party, is that he would be affected by the adverse result if any in the said suit.

22. In the instant case, when such attempt was sought to be made by the plaintiff/1st respondent in O.S.No.101 of 1995, petitioner and her husband had resisted it and got that application dismissed. Therefore, the petitioner is now estopped from raising a contention that the petitioner is affected by the judgment rendered in O.S.No.1676 of 2006(old OS.No.101 of 1995).

23. The judgment of the Madras High Court in **Tata Steel Limited**'s case(1 supra) relied upon by the counsel for petitioner

is clearly distinguishable on facts because in that case, there was no such application filed by the plaintiff originally to implead a third party, which was opposed by the very same third party, and after it was dismissed, there was another application by the third party to get impleaded. In that case, though the application of a third party to get impleaded was resisted by the plaintiff and it was dismissed and confirmed up to Supreme Court, the Madras High Court though it fit to grant leave to appeal to the said third party. The basis of the decision of the Madras High Court seems to be that there are fundamental differences between the impleadment of a person as a party to a suit, and the grant of leave to a third party to file an appeal, and that both cannot be equated.

24. In my considered opinion, petitioner having earlier resisted the attempt of the 1st respondent/plaintiff impleading her as a party in the suit, is clearly estopped from now contending that he is affected by the judgment in the suit, and she is entitled to grant of leave to challenge the judgment in the suit.

25. 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 the Constitution of India.

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

27. Consequently, miscellaneous petitions pending if any shall stand dismissed.

M.S. RAMACHANDRA RAO, J

23rd August, 2019.

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