

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.7230 of 2018

ORDER :

Heard the counsel for petitioner. None appeared for respondents.

2. This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.12.10.2018 passed in I.A.No.389 of 2018 in O.S.No.173 of 2012 on the file of the V Additional District Judge, Karimnagar.

3. The petitioner herein is plaintiff no.1 in the above suit.

4. She along with another party filed the said suit for partition of the plaint schedule property seeking half-share therein, past *mesne* profits, etc.

5. The petitioner contended that the suit schedule property is the property belonging to her sister Late Qudisiya Sarwar Sultana who died on 11.09.2011, and her co-plaintiffs are the legal heirs, and that they are entitled to a share therein as per Mohammedan Law of inheritance.

6. In that suit, the 1st respondent filed I.A.No.389 of 2018 to implead himself invoking Order I Rule 10(2) read with Rule 28 of Civil Procedure Code, 1908 claiming that the deceased-Sarwar Sultana is his step-mother, and that she executed an oral Gift in his favour out of love and affection on 21.07.2011; and that she later reduced it into writing and got it notarized, and so, he has an interest

in the plaint 'A' Schedule property, and therefore, he ought to be impleaded as party in the above suit.

7. The petitioner opposed the same contending that the Gift is an unregistered Gift, and since the 1st respondent is a stranger to the suit and not a member of the family, he cannot be impleaded in the suit; and he should file a separate suit for declaration of title and recovery of possession.

8. The Court below allowed the said application holding that the document filed by 1st respondent shows that he has some interest in the subject matter of the suit and the Gift or *Hiba* under Muslim law which is made in writing is not required to be registered, and so he ought to be impleaded as a party in the suit for proper adjudication of the case.

9. Challenging the same, the present Civil Revision Petition is filed.

10. The counsel for petitioner reiterated that the Gift Deed being unregistered and the 1st respondent not being a member of the family of the deceased, the Court below erred in allowing the said application.

11. The Supreme Court in **Hafeeza Bibi and others vs. Shaik Farid (Dead) By Lrs. and others**¹ had declared that under the Muslim Law relating to immoveable property, a Gift or *Hiba* which is made in writing, is not required to be registered.

¹ A.I.R. 2011 S.C. 1695

12. This legal position is not disputed by counsel for petitioner.
13. Once the document on which the 1st respondent relied on cannot be *prima facie* rejected on the ground of non-registration and the said document deals with 'A' schedule property which is subject matter of the suit, in order to avoid multiplicity of proceedings, the 1st respondent was entitled to be impleaded as party in the suit.
14. Merely because there is some delay in filing the application for impleadment the said application cannot be rejected since it is his case that he is the step-son of the deceased Sarwar Sultana and he is not aware of the pendency of the suit earlier thereto.
15. I therefore do not find any error of jurisdiction in the order passed by Court below warranting interference by this Court under Article 227 of the Constitution of India.
16. Accordingly, the Civil Revision Petition fails and it is dismissed. No order as to costs.
17. Since the suit is of the year 2012, the Court below shall endeavour to decide the suit as expeditiously as possible preferably within eight (08) months from the date of receipt of copy of the order.
18. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 25.06.2019

Ndr/*