

(2012) 06 AP CK 0016

Andhra Pradesh High Court

Case No: Civil Revision Petition 848 of 2012

Tai Nagaratnam Rao, Tai Veera

Venkata Subramanyam,

Motapothu Vijaya Lakshmi and

Koka Ramadevi

APPELLANT

Vs

M. Sulochana Devi and Others

RESPONDENT

Date of Decision: June 12, 2012

Citation: (2012) 5 ALD 264 : (2012) 5 ALT 228

Hon'ble Judges: C.V. Nagarjuna Reddy, J

Bench: Single Bench

Advocate: S. Subba Reddy in Both, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

C.V. Nagarjuna Reddy

1. These two civil revision petitions arise out of similar but separate orders passed by the lower Court whereby it has dismissed the petitions filed by the petitioners for their impleadment as defendants in O.S.No. 798 of 1980 on the file of the learned I Additional Junior Civil Judge, Kakinada which is at the stage of final decree proceedings. Despite service of notice on respondent No. 1, who is the plaintiff and who obtained a preliminary decree for partition, she has not entered appearance. At the hearing, no one represented respondent No. 1. I have heard the Learned Counsel for the petitioners.

2. The facts in both the cases are similar. Hence, it will suffice to state in brief the facts in C.R.P. No. 848 of 2012.

3. The petitioners claimed that the husband of petitioner No. 1 purchased a part of the suit schedule property from respondent No. 4. During his lifetime, the husband of petitioner No. 1 had constructed a house and the entire family had been living

therein. After his death, the petitioners are residing in the said house. On coming to know that a preliminary decree for partition was passed in O.S.No. 798 of 1980 filed by respondent No. 1 against respondent Nos. 2 to 4, the petitioners filed I.A. No. 407 of 2009 for their impleadment in the final decree proceedings. The said application was allowed by the lower Court. The petitioners have similarly filed I.A. No. 270 of 2011 for their impleadment as defendant Nos. 15 to 18 in the suit itself. In support of their application, they have specifically pleaded that despite the fact that late Lakshmipathi Rao had purchased the property from respondent No. 4 in the year 1979 itself and the suit was filed in the year 1980, they were not impleaded as defendants and that the preliminary decree was obtained by fraud and collusion among respondent Nos. 1 to 4. Respondent No. 1 resisted the said application. The lower Court by order dated 12.09.2011 dismissed the I.A. As noted above, similar application filed by the petitioners in C.R.P.No. 849 of 2012 was also dismissed.

4. At the hearing, Mr. S. Subba Reddy, Learned Counsel for the petitioner advanced two submissions, namely; that having already allowed the petitioners to come on record as respondents in the final decree proceedings, the lower Court ought to have allowed them to come on record as defendants in the suit as well and the petitioners, who claimed to be the owners of the house in their occupation which is a part of the suit schedule properties, have substantial interest in the subject matter of the suit and that in the interest of justice, they ought to have been impleaded as defendants in the suit. In support of his submissions, the Learned Counsel placed reliance on the judgment of the Division Bench of this Court in R.A. Narasinga Rao V. Chunduru Sarada¹ and also the judgment of a learned Single Judge of this Court in Ch. Yashoda Devi and another V. B. Dayakar Reddy and others².

5. I have carefully considered the submissions of the Learned Counsel for the petitioners with reference to the reasons contained in the orders of the lower Court. The power of the Court to implead a person as party is discretionary. However, the Court will have to exercise its discretion having regard to the nature of the claim and the facts and circumstances of the case. Where the presence of a person is necessary for effective adjudication of the disputes arising in the suit, the Court has to necessarily implead the person to come on record.

6. It is not in dispute that the petitioners have been claiming their substantive rights over the properties which are the subject matter of the preliminary decree. In recognition thereof, they were already allowed to come on record as respondents in the final decree proceedings. In R.A. Narasinga Rao *supra*, the Division Bench of this Court held that the Court has inherent power to set aside a preliminary decree at the instance of a party who has been impleaded after passing the preliminary decree and that the Court would exercise the power to do substantial justice between the parties having regard to the circumstances of the case.

7. As noted above, the petitioners have pleaded before the lower Court that the preliminary decree was obtained by collusion. The Court has repelled this plea on

the premise that as respondent No. 4, which is a Co-operative Society of which either the petitioners or their predecessors in title are members, has contested the suit, the decree binds them. This reasoning, in my opinion, begs the question. Even if respondent No. 4-Co-operative Society is a party, it cannot be presumed that it has seriously contested the suit. It would quite well be that the members of respondent No. 4 would not have been aware of the suit. The question, whether the said decree was collusive or not, needs to be examined in the final decree proceedings and it was premature for the lower Court to embark upon that question at the stage of considering the implead applications of the petitioners in the final decree proceedings as that would be a triable issue in the final decree proceedings.

8. Ordinarily, where a person shows that he has deep and substantive interest in the subject matter of the suit and that the final decree that may be passed would seriously affect his interest, the Court should not throw away an application for impleadment. As noted above, in the instant case, the petitioners were already allowed to come on record as respondents in the final decree proceedings. This being the admitted position, I do not find any reason whatsoever for the lower Court to decline to implead them as defendants in the suit itself. I am, therefore, of the opinion that refusal to allow the petitioners to come on record as defendants in the suit will result in serious miscarriage of justice.

9. For the above-mentioned reasons, the orders under revision are set aside and I.A.Nos. 270 and 271 of 2011 are allowed. Consequently, both the Civil Revision Petitions are allowed. As a sequel, C.R.P.M.P. Nos. 1171 and 1172 of 2012 filed by the petitioners for interim reliefs are disposed of as infructuous.