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Court : Andhra Pradesh

Decided On : Aug-05-2005

Reported in : 2006(1)ALD35

Judge : C.Y. Somayajulu, J.

Appeal No. : CRP Nos. 1778 and 1796 of 2005

Appellant : Kosuru Bhaskar and anr.

Respondent : Kosuru Ramachandraiah and ors.

Advocate for Pet/Ap. : M. Vidyavathi, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

C.Y. Somayajulu, J.

1. Since these two civil revision petitions are inter connected they are being disposed of by a common order.

2. CRP No. 1778 of 2005 arises out of I.A. No. 481 of 2004 in A.S.No. 53 of 2003 and C.R.P.No. 1796 of 2005 arises out of I.A. No. 480 of 2004 in A.S.No. 95 of 2003 on the tile of the Court of the III Additional District and Sessions Judge,

Nellore. A.S. No. 53 of 2003 is filed against the judgment and decree in O.S.No. 319 of 1995 and A.S.No. 95 of 2003 is filed against the decree and judgment in O.S.No. 317 of 1995. O.S. No. 319 of 1995 is filed by M. Tirupathi Swami and four others seeking an injunction restraining Kosuru Ramachandraiah, Govindaiah and Kamalamma from interfering with their peaceful possession of the properties specified in the schedule appended to the plaint, alleging that they had purchased the said property from Kosuru Ramachandraiah for valuable consideration under a registered sale deed dated 20-6-1980 and were put in possession thereof. O.S.No. 317 of 1995 is filed by K. Ramchandraiah against Karamsetti Saroja, Venkataramaiah, Modedugu Tirupathi Swamy Chennareddi Raja Reddy seeking an injunction restraining the defendants therein from interfering with his peaceful possession and enjoyment of the same property which is the subject-matter of O.S. No. 319 of 1995 alleging that he is the absolute owner and in his possession thereof and that the defendants in the suit are trying to interfere with his possession. Both, the suits were clubbed and common evidence was recorded, on the basis of the evidence adduced the trial Court dismissed O.S.No. 317 of 2005 and decreed O.S. No. 319 of 1995. In the appeals preferred by Kosuru Ramachandraiah against the dismissal of his suit and the decree passed against him in O.S.No. 319 of 1995 revision petitioners, who are the sons of the appellant Ramachandraiah filed I.A.Nos. 480 and 481 of 1995 seeking to implead themselves as parties to the appeals on the ground that they also have an interest in the subject-matter of the suits and hence are proper, if not necessary, parties to the proceedings. Those petitions were dismissed by the first appellate Court by the orders under revision.

3. The main contention of the learned Counsel for the petitioners is that revision petitioners, who are the sons of the first respondent Kosuru Ramachandraiah through his first wife, have an interest in the property which is the subject-matter of the suits, as that property was purchased by selling the jewelry belonging the mother of the revision petitioners, and that the father of the revision petitioners, with the help of his friends, had, with a view to defraud the revision petitioners, filed the suit as if that property belongs to him and got filed another suit against him to somehow to defeat the rights of the revision petitioners, and to bring home the fact that the property in dispute in fact belongs to revision petitioners it is

necessary that they should come on record, and further contended that revision petitioners in fact had filed O.S. No. 71 of 2003 for partition of the properties including the property covered by the two suits, and by relying on *Aliji Momonji and Co. v. Lalji Mavji and Ors.* : AIR 1997 SC64 , he strongly contended that revision petitioners can be brought on record.

4. In my considered opinion revision petitioners are neither necessary nor proper parties to either of the suits, which are for injunction simplicitor, in which the point for consideration would be as to who is in possession of the suit property by the date of filing of the suits. Title to the property need not be adjudicated therein and even if question of prima facie title is adjudicated the same would not, in any way, be binding on the revision petitioners as long as they are not parties to the suits. Admittedly, revision petitioners filed O.S. No. 71 of 2003 seeking partition of the property covered by the suits and other properties. If in that suit it is held that they have a right in the property covered by these suits, irrespective of the order of injunction granted in O.S. No. 319 of 2005 filed by 2nd respondent and others against their father, revision petitioners would be entitled to recover possession of the property covered by the suits, if they have made 2nd respondent and others parties to O.S. No. 71 of 2003 filed by them for partition. In these suits even if the revision petitioners are added as parties at the stage of appeal no useful purpose would be served because their title to the property need not and cannot be gone into at the stage of appeal, as the appeals have to be decided only on the basis of the evidence recorded by the trial Court. By adding the revision petitioners a scope would be given to prolong the litigation, which, in the facts and circumstances is but an abuse of process of Court.

5. *Aliji Momonji and Co.* case (supra), relied on by the learned Counsel for the revision petitioners has no application to the facts of this case. In that case, when a notice for demolition of an unauthorized construction was issued by the Municipal Corporation, the tenant of that premises filed a suit seeking an injunction against the Municipal-Corporation. In that suit when the landlord of the tenant wanted to come on record, the Apex Court holding that he would be a proper party to the suit as to part of his building is ordered to be demolished, and as such his right is in jeopardy, allowed him to come on record. As stated earlier the rights of

the revision petitioners, if any, in the property covered by the suits, would not be in jeopardy by the decrees passed or to be passed in the suits and so I find no grounds to admit these petitions and hence these revisions are dismissed at the stage of admission. No costs.

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