



HIGH COURT OF ANDHRA PRADESH
WEDNESDAY ,THE TWENTY SEVENTH DAY OF APRIL
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE MS JUSTICE B S BHANUMATHI
CIVIL REVISION PETITION NO: 449 OF 2018

Between:

1. Jagarlamudi Padmavathi W/o.Nageswara Rao,
R/o.Karamchedu Village , Parchur DMC, Prakasam
2. Jagarlamudi Chamundeswari W/o.Ranganayakulu
R/o.Karamchedu Village , Parchur DMC, Prakasam District
3. Yarlagadda Lakshminarayana (died) per LRS S/o.Balaiah
R/o.Karamchedu Village , Parchur DMC, Prakasam District
4. Yarlagadda Laxamma(died) per LRS R/o.Karamchedu Village ,
Parchur DMC, Prakasam District

...PETITIONER(S)

AND:

1. Ravim ramanaiah S/o.Mallikarjuna Rao, R/o.Devarapally, Village,
Parchur Mandal, Prakasam District
5. Jagarlamudi Lakshminarayana S/o.Papaiah
R/o.Devarapally Village, Parchur Mandal, Prakasam District
6. Jagarlamudi Nageswara Rao S/o.Papaiah
R/o.Devarapally Village, Parchur Mandal, Prakasam District
7. Addagada Parvathi W/o.Subbarayudu
R/o.Devarapally Village, Parchur Mandal, Prakasam District

...RESPONDENTS

Counsel for the Petitioner(s): BALAJI MEDAMALLI

Counsel for the Respondents: RAJA REDDY KONETI

The Court made the following: ORDER

**THE HONOURABLE MS JUSTICE B.S.BHANUMATHI****CIVIL REVISION PETITION No.449 of 2018****ORDER:-**

In a suit for permanent injunction, a petition was filed to bring on record the legal representatives of the defendant No.3, who died prior to filing of the suit. Thus, this Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order and decree dated 21.12.2017 in I.A.No.2 of 2017 in O.S.No.124 of 2016, on the file of the Senior Civil Judge, Parchur, by which allowed the petition under Order 22, Rule 4 of CPC r/w Section 151 of CPC, to add respondent Nos.5 to 7 therein as defendants 5 to 7, being legal representatives of deceased respondent/defendant No.3 and to amend the plaint.

2. The contention of the petitioners/plaintiffs in the petition is that the plaintiffs purchased the suit schedule property in a Court auction conducted in E.P.No.16/1999 in O.S.No.62/1989 and that the defendants were interfering with their peaceful possession and enjoyment and thus they filed suit unaware of the death of defendant No.3 and later, basing on the endorsement on the summons and notices of the Court, the plaintiffs came to know about the death of defendant No.3 and thus the present petition was filed to bring the legal representatives of deceased defendant No.3.

3. The petition was opposed by filing counters by respondent Nos.5 to 7, who are the proposed parties, stating that the plaintiffs have approached the Court with unclean hands and that since the suit is for permanent injunction, the petitioners



should be aware of who is interfering with the possession and enjoyment and thus they filed a false case against these respondents with an intention to harass them and the petition is liable to be dismissed. It is further contended that the petitioners are not aware of the parties and thus surname was wrongly mentioned. It is also stated that they are not necessary parties, though they are the legal heirs of the deceased defendant/respondent No.3. It is further contended that the relief claimed in the present Revision Petition arises only when defendant No.3 dies pending the suit, but not when the death occurred before the institution of the suit.

4. The defendant Nos.1, 2 and 4 and the proposed defendants are represented by the same counsel, as can be seen from the docket proceedings dated 07.04.2017, in which it was recorded that the same counsel has filed vakalat for proposed parties as well.

5. After hearing both parties, the Trial Court allowed the petition and the Trial Court further opined that the proposed parties are the legal heirs of defendant No.3 and therefore they are necessary parties to the suit and to prevent multiplicity of proceedings, their presence is necessary for full and final determination of deceased. The Trial Court rejected the argument that if there is any interference by the proposed defendants, a separate suit can be laid by the plaintiffs. Having aggrieved by such order, the proposed defendant filed a revision petition. The 1st respondent is the plaintiff and respondent Nos.2 to 4 are defendant Nos.1, 2 and 4 respectively. Respondent Nos.2 to 4 are shown as necessary parties.



6. Learned counsel for the revision petitioners submitted that the defendant No.3 died prior to institution of the suit and when there is no cause of action against defendant No.3, the question of bringing the legal heirs of defendant No.3 doesn't arise and more particularly, when there is no cause of action as there is no averment that the proposed parties are also interfering with possession of the suit schedule property. He further contended that in a suit for injunction, the decree is binding on the parties to the suit, that is, decree is in "personam" but not in rem and for all these reasons, they need not be impleaded.

7. Learned counsel for the 1st respondent submitted that permanent injunction can be granted not just when interference in the possession is claimed, but it can be granted against the defendant enjoining from the assertion of right as stated under Section 37(2) of the Specific Relief Act, 1963,(for short 'the Act') and whereas, in the present case, it is not the contention of the proposed parties that they are not claiming or asserting any right over the property through the deceased defendant No.3 and therefore, there is no force in the contention that they are not necessary parties for want of plea against them that they are also interfering with the possession. However, he further stated that the plea already taken in the plaint is sufficient against the proposed parties as well, since plural word 'defendants' is used in the plaint. For the same reasons, he further submitted that it is incorrect to state that there is no cause of action as against these proposed parties and that to avoid multiplicity of proceedings by filing another suit, they can be impleaded in the present suit.



8. As the defendant No.3 died before filing of the suit, the parties could be brought on record under Order I, Rule 10 of CPC, though not under Order 22, Rule 4 CPC. However, since the provision of law has not been under challenge either before the Trial Court or this Court, it may not be much necessary to dwell into that question. It is sufficient to say that the settled proportion of law is that mere wrong quoting of law is not a ground to reject any relief which otherwise can be granted. It is also not necessary to go into question whether it is necessary to bring legal representative of a defendant who died after institution of a suit for permanent injunction, as the defendant No.3 died before filing of this suit.

9. The main contention of the revision petitioners is that they are not necessary parties as there is no assertion against them that they are interfering with the possession of the suit schedule property. As rightly contended by the learned counsel for the 1st respondent, it is not mere assertion of interference with the possession of the property which gives cause of action to seek relief of perpetual injunction, but on the other hand, as Section 37(2) of the Act makes abundantly clear that such relief can be granted against the defendant preventing from 'assertion of a right' or from 'the commission of an act'. Therefore, though the decree for permanent injunction is granted in personam, a suit can be laid against the party seeking the decree to enjoining him from assertion of right. As such, there is no bar to implead the proposed parties on the contention that there is no plea against them about the interference with the possession. It may also be added that 'commission of an act' is most commonly pleaded in



the form of 'interference with the possession' in suits for permanent injunction. Merely because it is a common plea taken, it is not the only ground to seek the relief of perpetual injunction as can be seen from the above referred provision. Their relationship with the 3rd defendant is not in dispute. So, they are her legal representatives stepping into her shoes on her death and they are necessary parties to the suit. Though the Trial Court has not exhaustively dealt with these aspects, the ultimate conclusion permitting them to be impleaded cannot be set aside. Thus, this Court does not see any reason to interfere with the impugned order.

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

Miscellaneous petitions, if any pending, in this writ petition shall stand closed.

JUSTICE B.S.BHANUMATHI

Date : 27-04-2022

VSL



THE HONOURABLE MS JUSTICE B.S.BHANUMATHI

CIVIL REVISION PETITION No.449 of 2018

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