

(2013) 09 AP CK 0089

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2482 of 2011

Racha Jana Bai

APPELLANT

Vs

Racha Gowreesham and Another

RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Citation : (2014) 1 ALD 724 : (2014) 2 ALT 220

Hon'ble Judges : A. Rajasheker Reddy, J

Bench : Single Bench

Advocate : N. Vijay, for the Appellant;

Final Decision : Allowed

Judgement

A. Rajasheker Reddy, J.—This Civil Revision Petition is directed against order dated 13.05.2011 in I.A. No. 48 of 2010 in O.P. No. 1228 of 2009 passed by the Judge, Additional Family Court, Hyderabad, wherein the Court below allowed the application filed by the second respondent herein under Order 1 Rule 10 r/w Section 151 CPC to permit her to implead herself as second respondent in the O.P. No. 1228 of 2009. Brief facts which are necessary for disposal of the Civil Revision Petition are as under:

The case of the revision petitioner-wife is that she filed O.P. No. 1228 of 2009 on the file of the Judge, Additional Family Court, Hyderabad against the first respondent-husband for partition and separate possession claiming to be the owner of schedule property house No. 12-2-823/B/14. In that Petition, the second respondent filed I.A. No. 48 of 2010 stating that there is collusion between the revision petitioner and first respondent herein, who are wife and husband respectively and in pursuance of the said collusion, O.P. No. 1228 of 2009 was filed with false and fictitious grounds to defraud the rights of the second respondent herein over the petition schedule property. According to the second respondent herein, the revision petitioner suppressed the material facts and filed O.P. No. 1228 of 2009. She further stated that revision petitioner and

the first respondent herein are her parents and the schedule house was gifted to her by the revision petitioner through registered gift deed document No. 5908 of 2006 dated 03.11.2006, from which date, she has been in possession and enjoyment of the same and the said fact was suppressed in the O.P. No. 1228 of 2009. It is also stated that the first respondent herein, who is her father filed suit O.S. No. 2319 of 2006 for partition and separate possession against her and the Court below passed preliminary decree in O.S. No. 2319 of 2006 and appointed Advocate-Commissioner to execute the said preliminary decree passed in the original suit. The said fact was suppressed by the revision petitioner and the first respondent herein in O.P. No. 1228 of 2009. She further stated that she is the absolute owner of the said house and the revision petitioner is not having any right over the said house. As such, second respondent is necessary party to O.P. No. 1228 of 2009. If she is not permitted to implead in the above O.P., she will be put to irreparable loss and hardship.

2. Though notice was served by the Court below, nobody appeared for the second respondent before the Court below, who is the first respondent herein, he was set ex parte on 04.06.2010 in I.A. No. 48 of 2010.

3. The revision petitioner filed counter affidavit before the court below in I.A. No. 48 of 2010 denying the execution of gift deed in favour of the second respondent herein in the respect of the schedule house. According to the revision petitioner, there is another property bearing No. 1-7-630/22, 22A, 22B, Zemini Colony, Ramnagar, Hyderabad and the said house is in the name of the revision petitioner, which was purchased by the first respondent herein and thereafter he used to collect the rents.

4. It is further stated in the counter that during August, 2006, some misunderstandings arose between the revision petitioner and the first respondent herein and taking advantage of the same, the second respondent herein supported the revision petitioner, to harass the first respondent. The second respondent herein informed the revision petitioner that latter should execute G.P.A. in favour of the second petitioner in respect of the said house property, so that the second respondent can take steps against the first respondent and also collect rents from the tenants. As misunderstandings increased, the revision petitioner thought it proper to execute G.P.A. The revision petitioner further states that as she is an illiterate, the second respondent took her to office of Registrar and got executed document and she was informed the same as GPA. As she is the daughter of the revision petitioner, she believed her and signed on the said document, which was produced before her and further stated that she does not know the contents of the said document. It is further contended that the revision petitioner never executed any gift deed but subsequently, she came to know that the second respondent played fraud and therefore, she revoked the gift deed. She further stated that the second respondent has no right and she was not put in possession of the house property No. 12-2-823/B/14.

5. The Court below, after considering the pleadings and arguments of both sides,

allowed the same by order dated 13.05.2011 directing the revision petitioner to amend the O.P. No. 1228 of 2009 by not only impleading the second respondent as second respondent, but also her husband Sai Prasad as third respondent in I.A. No. 834 of 2009 in O.P. No. 1228 of 2009. Against the same, the present revision petition is filed.

6. Learned counsel for the revision petitioner contends that the second respondent has no locus standi to file I.A. No. 48 of 2010 for impleading her in O.P. No. 1228 of 2009 filed by the revision petitioner against her husband, who is the first respondent herein for partition and separate possession of the schedule property.

7. The case of the second respondent does not fall under explanation u/s 7 of the Family Courts Act, 1984, as such, her application for impleadment is not maintainable. Only the disputes between the parties, as mentioned u/s 7 of the Act, can be decided by the Family Court. In support of his contention, he relied on decision reported in P. Srihari Vs. P. Sukunda and another,

8. Though, notice is ordered and served, none appeared on behalf of the respondents 1 and 2 and no counter affidavit is filed on their behalf.

9. The dispute in O.P. No. 1228 of 2009 is admittedly between the revision petitioner and the first respondent, who are wife and husband respectively in respect of the house property. The claim of the second respondent is that the revision petitioner has gifted the schedule property in O.P. No. 1228 of 2009 in her favour, as such, she is necessary party to O.P. 1228 of 2009. The Court below, after holding that the second respondent as necessary party allowed the I.A. erroneously not only directing impleadment of the second respondent but also her husband Sai Prasad, though he is not a party to the impleadment petition. In so far as the impleadment of the second respondent is concerned, the Division Bench of this Court in P. Srihari v. P. Sukunda and another (supra) held as under:

5. In view of the above, the essential ingredient should be a dispute between the husband and the wife and the said dispute can be with regard to their marital status, divorce, restitution of conjugal rights, juridical separation, child custody, maintenance, as also property sharing. But, in no event, the Family Court can have jurisdiction if the above dispute is absent. By no stretch of imagination, can the Family Court assume jurisdiction, if there is a dispute between the brothers, sisters, mothers, fathers etc., concerning property and the case on hand being one such, the Family Court had clearly no jurisdiction.

10. The Division Bench clearly held that the suit filed by the brothers against sisters is not maintainable by overruling the judgment of the learned Single Judge and the plaint presented in that case, was directed to be returned for presentation before the concerned Court.

11. In the present case on hand also, since the dispute in O.P. No. 1228 of 2009

is between the wife and husband. The second respondent being daughter, cannot agitate her rights in the said O.P. If she has got any grievance against revocation of gift deed, said to have been executed by the revision petitioner in her favour, it is open for her to file a separate suit in respect of the same. But as per law laid down by the Division Bench of this Court in P. Srihari v. P. Sukunda and another (supra) and as per explanation to Section 7 of the Act, she cannot herself implead in the O.P. No. 1228 of 2009 filed by the revision petitioner against her husband, who is the first respondent herein. In view of the above discussion, I am of the opinion that the impugned order passed by the trial Court to implead the second respondent as well as her husband is liable to be set aside by allowing this Civil Revision Petition.

Accordingly, the Civil Revision Petition is allowed. The Court below is directed to dispose of the O.P. No. 1228 of 2009 within four months from the date of receipt of a copy of this order. There shall be no order as to costs. As a sequel, miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.