* THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

+ CIVIL REVISION PETITION No.3185 of 2014

% 10.04.2015

# Pelimelly Ramesh and others.

…Petitioners

vs.

$ E.Sravan Kumar and others.

… Respondents

!Counsel for the Petitioner : Sri K.Mahipathi Rao

^Counsel for the Respondents : Sri K.V.Simhadri

<Gist :

>Head Note :

? Cases referred

1. 2011 (6) ALD 324
2. (2012) 8 SCC 384
3. 2013 (3) ALD 111 (SC)
4. 2014 (5) ALD 24
5. 2014 (5) ALT 360
6. 2009 (5) ALD 402
7. 2005 (3) ALD 83
8. 2010 (5) ALD 24 (SC)
9. AIR 2007 SC 3166
10. AIR 1958 SC 886
11. (2005) 6 SCC 733
12. AIR 2008 SC 2134
13. 1995 (3) SCC 147
14. AIR (32) 1945 Calcutta 355
15. AIR 1949 Pat 405

**THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

**CIVIL REVISION PETITION No.3185 of 2014**

**ORDER:**

Heard the learned counsel for petitioners and the learned counsel for first respondent.

2. This Civil Revision Petition is directed against the order dated 09.07.2014 in

I.A.No.11 of 2014 in O.S.No.36 of 2008 passed by the learned V Additional District Judge at Bhongir (for short, trial Court).

3. I.A.No.11 of 2014 was filed by the Petitioners herein seeking to implead them as defendant Nos.10 to 13 in the said suit. The suit was filed by the first respondent herein for specific performance of agreement of sale dated 28.10.2006 against defendant Nos.1 to 9 in respect of land admeasuring Acs.20-20 guntas in Survey No.314/A of Siddapuram Village, Yadagirigutta Mandal, Nalgonda District. The petitioners claim that they have purchased an extent of Acs.11-15 guntas from out of the said suit schedule property from defendant Nos.5 to 9 under an agreement of sale dated 03.02.2006, which was later on registered on 25.07.2008. They also claim that they are in possession of the property. They state that they thus got substantial interest in the suit schedule property and the suit was filed wrongly without impleading them as parties to the suit.

4. All the defendants, except defendant No.9, remained *ex parte* in the suit in January, 2012.

5. The first respondent filed a counter stating that the proposed defendants colluded with defendants 1 to 9 to come on record by creating false documents and the document executed in their favour is hit by doctrine of *lis pendens.* It is his case, that, after issuing due notices to defendants 1 to 9, he got issued a paper publication on 19.04.2008 in Eenadu Telugu daily of Nalgonda Edition informing the general public about his proposed purchase of the suit schedule land. It is also stated in the counter that the present petition was filed only to delay the disposal of the suit.

6. The trial Court dismissed the implead application with the following observations.

> " 7. The averments of the affidavit therefore, do not show that the petitioners are bonafide purchasers for value. The respondent No.1 having already filed the suit by the date of execution of registered sale deed document bearing No.7416/2008, dt.25.07.2008, principle of lispendency operates. In other words, the rights of the petitioners would be subject to the outcome of the suit. The petitioners having purchased Ac.11-15 gts of land during the pendency of the suit, it can be said that they stepped into the shoes of their vendors/respondents. It is not the case that the respondents No.6 to 10 are not parties to the suit and that they are not contesting the suit.
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> 8. D-9 has filed written statement. The suit is coming for arguments. The petitioners therefore, not only failed to prove that they are necessary and proper parties to the suit, but there has been delay in filing the petition. The paper publication having been issued by the respondents/plaintiffs in Eenadu Telugu Daily dt.19-04-2008, it is presumed that the petitioners are aware of the transaction between the respondent No.1 and respondents No.2 to 10."

7. The case of the plaintiff, as per the material available on record, is that he entered into an agreement of sale on 28.10.2006 with defendants 1 to 3 on behalf of defendants 4 to 9 for purchasing suit schedule property admeasuring Acs.20-20 guntas of dry land for a consideration of Rs.27,67,500/- and paid an amount of Rs.6,00,000/- as advance. He agreed to pay remaining amount of Rs.21,67,500/- at the time of registration. Defendants 1 to 3 agreed to hand over the title deeds and patta passbooks at the time of

registration, on or before 35 days from the date of agreement of sale. On 04.12.2006, the plaintiff paid a further amount of Rs.12,00,000/- towards part sale consideration to defendants 1 to 9 and defendant No.4 received the amount on behalf of other defendants and issued a receipt. Inspite of his notice dated 10.04.2008 followed by telegraphic notices to defendants 1 to 9, they failed to execute the registered sale deed. In those circumstances, the plaintiff issued a paper notice in Eenadu Telugu daily, Nalgonda Edition on 19.04.2008 cautioning the prospective purchasers. None of the defendants responded to the paper notice issued by the plaintiff. It is also significant that the plaintiff deposited the balance sale consideration of Rs.9,67,500/- by way of demand draft No.006225, dated 10.07.2008, drawn on HDFC Bank in favour of the District Judge, Nalgonda District in pursuance of the directions of the trial Court. It is the case of the plaintiff that the plea set up by the proposed defendants was not bona fide.

8. The case of the proposed defendants is that they entered into agreement of sale on 03.02.2006 to purchase an extent of Acs.11-15 guntas out of the suit schedule property for a sale consideration of Rs.4,55,000/- with defendants 5 to 9. Learned counsel for the petitioners submits that all the defendants in the suit, except defendant No.9, remained *ex parte* in the suit and even defendant No.9, though filed written statement, did not contest the suit and hence their interest would be affected, if the suit is decreed *ex parte.* Since their purchase of property was under a registered sale deed, it cannot be held that they are not bona fide purchasers and hence the order of the trial Court is bad in law. He relied on the decisions in **Pallapu Mohanarao (died) by LRs. V. Thammisetty Subba Rao**[1], **Vidur Impex & Traders (P) Ltd., V. Tosh Apartments (P) Ltd.**[2], **Thomson Press (India) Ltd., V.Nanak Builders & Investors P. Ltd.**[3], **Darji Krishna Murthy V. M.Shankar Reddy**[4], and **Matta @ Palina Bhavani V. Matta Tulasi Rao**[5].

9. Learned counsel for the first respondent submits that by filing the present application, the proposed defendants want to delay the proceedings. He also submits that in a suit for specific performance, the purchasers of property, pending disposal of the suit, are not necessary parties. He submits that the decisions cited by the learned counsel for the petitioners will not apply to the facts of the present case.

10. The above pleadings show that the suit filed by the first respondent herein was contested by defendant No.9, who was given up in the present proceedings. Defendant No.9 filed his written statement and did not turn up thereafter in the suit. The plaintiff issued a paper publication on 19.04.2008 and the proposed defendants purchased a part of the property by registered sale deed dated 25.07.2008. The present application was filed in April, 2013. In the circumstances, it cannot be said that the proposed defendants are not having knowledge about the pendency of the suit, as they claimed to have

purchased the property from defendant Nos.5 to 9.

11. In **Thammisetty Subba Rao**'s case (1 supra), this Court, by placing reliance on the decisions in **Indu Bai V. Rajendra Kumar Bhandari**[6], **Kasturi V. Iyyamperumal**[7], **Mumbai International Airport Pvt. Ltd., V. Regency Convention Centre & Hotels Pvt. Ltd.**[8] and **Sumtibai V. Paras Finance Co.**[9]**,** held that the petitioners, who were parties to a preliminary decree in which the subject matter of the suit for specific performance is one of items therein, are entitled to come on record.

12. In **Vidur Impex & Traders (P) Ltd.**'s case (2 supra), the Supreme Court held that the application of the proposed parties who purchased the property pending disposal of the suit in violation of the injunction orders, cannot be allowed.

13. In **Thomson Press (India) Ltd.**'s case (3 supra), the Supreme Court held that a subsequent purchaser of suit property with knowledge of earlier agreement can be added as a party to the suit. It was also held that in view of Section 19 of the Specific Relief Act, 1963, a contract for specific performance can be enforced against the parties to the contract and the persons mentioned in the said section. But, it cannot be enforced against a person who is a transferee from the vendor for valuable consideration and without notice of the original contract which is sought to be enforced in the suit. The Supreme Court further held that the subsequent purchaser can come on record, but with a rider that he shall be permitted to take all such defences which are available to his vendor only. The Supreme Court ultimately held as follows:

> " 58. To sum up:
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> 1) The appellant is not a *bona fide* purchaser and is, therefore, not protected against specific performance of the contract between the plaintiffs and the owner defendants in the suit.
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> (2) The transfer in favour of the appellant *pendente lite* is effective in transferring title to the appellant but such title shall remain subservient to the rights of the plaintiff in the suit and subject to any direction which the Court may eventually pass therein.
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> (3) Since the appellant has purchased the entire estate that forms the subject matter of the suit, the appellant is entitled to be added as a party defendant to the suit.
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> (4) The appellant shall as a result of his addition raise and pursue only such defenses as were available and taken by the original defendants and none other.

14. A learned Single Judge of this Court in **Darji Krishna Murthy**'s case (4 supra), allowed the application of the purchaser of the property prior to the filing of the suit to be impleaded as a party to the suit. The same learned Single Judge in **Matta Tulasi Rao**'s case (5 supra) dismissed the application filed by the father and daughter seeking impleadment in a suit filed for specific performance by vendee against the parents-in-law and husband of the said daughter.

15. Three Judge Bench of the Supreme Court in **Razia Begum V. Sahebzadi Anwar**

**Begum**[10]**,** arrived at the following conclusions.

> "(13) As a result of these considerations, we have arrived at the following conclusions:-
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> (1) That the question of addition of parties under R. 10 of O.1 of the Code of Civil Procedure, is generally not one of initial jurisdiction of the court, but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case; but in some cases, it may raise controversies as to the power of the court, in contra distinction to its inherent jurisdiction, or, in other words, of jurisdiction in the limited sense in which it is used in s. 115 of the Code;
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> (2) That in a suit relating to property in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest in the subject matter of the litigation;
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> (3) Where the subject-matter of a litigation is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the court is of the opinion that by adding that party it would be in a better position effectually and completely to adjudicate upon the controversy;
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> (4) The cases contemplated in the last proposition have to be determined in accordance with the statutory provisions of Ss. 42 and 43 of the Specific Relief Act;
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> (5) In cases covered by those statutory provisions the court is not bound to grant the declaration prayed for, on a mere admission of the claim by the defendant, if the court has reasons to insist upon a clear proof apart from the admission;
>
> (6) The result of a declaratory decree on the question of status such as in controversy in the instant case affects not only the parties actually before the court but generations to come, and, in view of that consideration, the rule of I present interest' as evolved by case law relating to disputes about property does not apply with full force; and
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> (7)The rule laid down in s. 43 of the Specific Relief Act is not exactly a rule of res judicata. It is narrower in one sense and wider in another."

16. In **Kasturi V. Iyyamperumal**[11]**,** a three Judge Bench of the Supreme Court set aside the orders of the High Court and the trial Court and dismissed the application for addition of parties. The facts in that case were that the agreement holder filed a suit against the vendor for specific performance of contract. In the said suit, some third parties, who are not parties to the contract by setting up a claim of independent title and possession of the contracted property, filed an application to get themselves added in the suit as defendants. The trial Court allowed the application on the ground that they were claiming title and possession of the contracted property and hence they must be held to have a direct interest in the subject-matter of the suit and entitled to be added as party defendants in the suit as their presence would be necessary to decide the controversies raised in the suit. The High Court, in revision, confirmed the said order. The Supreme Court considered the validity of those orders and held that two tests must be satisfied by a person, who is seeking addition in a suit for specific performance of contract for sale. The first test is that there must be a right to some relief against such party relating to the same subject-matter involved in the proceedings for specific performance of contract for sale and the second one is that it is not possible for the Court to pass effective decree or order in the absence of such a party. The Supreme Court held that the application of the third parties cannot satisfy the above tests on the ground that if the decree for specific performance of the contract for sale is passed in

absence of those persons, their possession over the contracted property can be disturbed or they can be dispossessed from the contracted property in execution of the decree for specific performance of the contract for sale obtained by the plaintiff against the vendors. The said decision was followed in **Bharat Karsondas Thakkar V. M/s. Kiran Construction Co.**[12]. In the said case, the Supreme Court held that the reliance placed by the Division Bench in **Anil Kumar Singh V. Shivnath Mishra**[13]**,** wherein in a suit for specific performance, the respondent, who was not a party to the contract, but wanted to be impleaded as a defendant on the ground that he acquired subsequent interest as a co-owner by virtue of the decree obtained from the Court, was not entitled to be joined as defendant either under Rule 1, Rule 3 or under Order I Rule 10(2) of the Code of Civil Procedure, having regard to the provisions of Sections 15 and 6 of the Specific Relief Act.

17. In **Prem Sukh Gulgulia v. Habib Ullah**[14], a Division Bench of the Calcutta High Court considered the issue relating to the necessary parties in a suit for specific performance of contract for sale and held as follows:

> "The necessary parties in a suit for specific performance of a contract for sale are the parties to the contract, or if they are dead their legal representatives, as also a person who had purchased the property from the vendor after the contract. He is a necessary party as he would be affected, if he is volunteer, or if a purchaser for value, had purchased with notice of the contract. A person who claims adversely to the vendor is, however, not a necessary party. Where the property stands in the name of a person other than the vendor, and the suit for specific performance is brought by the purchaser, that person may be joined as a defendant as a proper party on an allegation that he is the benamidar of the vendor but if he appears and contends that he is not the benamidar of the vendor the proper procedure would be to discharge him from the suit, leaving it to the plaintiff in the suit for specific performance to institute a suit against him after he had got the conveyance in execution of the decree for specific performance against the vendor. This is on the principle that the scope of a suit for specific performance of a contract for sale ought not to be enlarged and the suit turned also into a title suit between one of either of the parties to the contract and a stranger to the contract…"

18. The High Court of Patna in **Rambilas Singh v. Lokenath Chaudhuri**[15] held as follows:

> "…It is obvious that, when specific performance is sought of an agreement to convey land, and when subsequent to the agreement, the person who has undertaken to convey the land has conveyed it to a third person, specific performance ought to be sought as against that third person and not as against the original owner as by reason of the conveyance the legal title to the property has vested in the third person…"

19. Section 15 of the Specific Relief Act reads as follows:

> "Section 15. Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by—
> (a) any party thereto;
> (b) the representative in interest or the principal, of any party thereto:
>
> Provided that where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his

interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless such party has already performed his part of the contract, or the performance thereof by his representative in interest, or his principal, has been accepted by the other party;

(c) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder;

(d) where the contract has been entered into by a tenant for life in due exercise of a power, the reminderman;

(e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant;

(f) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach;

(g) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(h) when the promoters of a company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company:

Provided that the company has accepted the contract and has communicated such acceptance to the other party to the contract."

20. A party is called as necessary party when his presence is necessary to the passing of the decree and two conditions must be satisfied; (1) there must be a right to some relief against such party in respect of the subject matter involved in the suit and (2) his presence is necessary to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit. Even though a person may not have any legal interest and no relief is claimed against him, his presence some times may be necessary for complete and final decision of the question involved in the suit. In other words, the presence of such person may be helpful in effectively adjudicating upon all the points in dispute. Such person is called proper party.

21. It is well settled in law that in case of impleadment of parties, it is not the jurisdiction of the Court, but the judicial discretion which has to be exercised keeping in mind all the facts and circumstances of a particular case. In the present case, the application is filed by persons, who claimed to have purchased a part of property under a registered sale deed pending the suit. Though they ought to have been aware of the paper publication taken by the Plaintiff prior to the institution of the suit and the pendency of the suit, as the vendors were made parties to the proceedings, their legal rights in the property would be affected by the proposed decree, if it is passed in favour of the plaintiff. The petitioners did not explain the reason for filing the application belatedly after five years. Almost all the defendants in the suit have not contested. Though defendant No.9 filed a written statement, he did not participate in the subsequent proceedings.

22. In the circumstances, justice would demand the application of the petitioners be permitted subject to payment of costs of Rs.5,000/- to the plaintiff with a condition that they cannot be permitted to take defences which are not available to their vendors as held by the Supreme Court in **Thomson Press (India) Ltd.**'s case (3 supra).

23. Subject to the above observations, the Civil Revision Petition is allowed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

**A.RAMALINGESWARA RAO, J**

Date:10.04.2015

Note: LR copy to be marked: **Yes**
B/o. TJMR

[1] 2011 (6) ALD 324
[2] (2012) 8 SCC 384
[3] 2013 (3) ALD 111 (SC)
[4] 2014 (5) ALD 24
[5] 2014 (5) ALT 360
[6] 2009 (5) ALD 402
[7] 2005 (3) ALD 83
[8] 2010 (5) ALD 24 (SC)
[9] AIR 2007 SC 3166
[10] AIR 1958 SC 886
[11] (2005) 6 SCC 733
[12] AIR 2008 SC 2134
[13] 1995 (3) SCC 147
[14] AIR (32) 1945 Calcutta 355
[15] AIR 1949 Pat 405