

THE HON'BLE SRI JUSTICE K.C.BHANU

AND

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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A.S.M.P.No.648 OF 2015

AND

APPEAL SUIT No.305 OF 2015

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JUDGMENT: (per Hon'ble Sri Justice K.C.Bhanu)

This Appeal Suit, under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908, is directed against the judgment and decree, dated 19.07.2012, in Original Suit No.209 of 2011 passed by the Principal District Judge, Visakhapatnam.

2. A.S.M.P.No.648 of 2015 is filed to implead the proposed respondent Nos.7 to 17 as respondent Nos.7 to 17 in the appeal for better adjudication of the case.

3. The appellants herein are third parties, respondent Nos.1 and 2 herein are the plaintiffs and respondent Nos.3 to 6 are the defendants in the suit. For the sake of convenience, the parties are hereinafter referred to, as they are arrayed in the Original Suit.

4. The aforesaid Original Suit was filed by the plaintiffs against the defendants for specific performance of agreement of sale, dated 11.07.2005, said to have been executed by the defendants in favour of the plaintiffs, after receiving the balance sale consideration. Defendant Nos.1 and 2 were set *ex parte* as they did not contest the matter, whereas defendant No.2, representing defendant Nos.3 and 4 as their natural guardian, filed written statement stating that she has no objection for execution of sale deeds in favour of the plaintiffs. After considering the oral and

documentary evidence, the Court below decreed the suit directing the defendants therein to execute a regular sale deed in favour of the plaintiffs on deposit of the balance sale consideration of Rs.5,00,000/- within one month from the date of the said judgment in name of defendant Nos.3 and 4, being minors, represented by their mother defendant No.2, by way of fixed deposit in any nationalized bank, and in default, the plaintiffs were given liberty to approach the Court below to obtain a regular sale deed under due process of law. Challenging the said judgment and decree, the proposed appellants filed the present appeal.

5. Learned counsel appearing for the proposed appellants vehemently contended that the proposed appellants 1 to 7 are the real owners of the plaint schedule property as their predecessor in title have got ryotwari patta; that the proposed appellants said to have purchased the properties from proposed respondent Nos.7 to 17 herein by virtue of registered sale deeds, dated 27.04.2013; that by playing fraud on the Court, plaintiffs obtained decree in collusion with the defendants; that when the defendants are ready and willing to perform their part of contract, nothing prevented from executing alleged agreement of sale; that the interests of the proposed appellants are to be seriously affected by the impugned judgment and hence, he prays to admit the appeal.

6. On the other hand, learned counsel for the respondents opposed the same on the ground that as the proposed appellants said to have purchased the properties from proposed respondent Nos.7 to 17 and they are also not parties to the suit, the appeal itself is not maintainable against the proposed appellants and hence, he prays to dismiss the appeal.

7. The proposed appellants claim to have purchased the schedule properties from proposed respondent Nos.7 to 17 under registered sale deeds, dated 27.04.2013. Admittedly, the proposed appellants as well as proposed respondent Nos.7 to 17 are not parties to Original Suit No.209 of 2011.

8. There cannot be any dispute that in a suit for specific performance, only

parties to the agreement are necessary and proper parties in the suit have to file an appeal. On this aspect, it is pertinent to refer to a decision reported in **KASTURI V. IYYAMPERUMAL AND OTHERS**, wherein it is held thus (para 19):

“19. It is well settled that in a suit for specific performance of a contract for sale the lis between the appellant and Respondents 2 and 3 shall only be gone into and it is also not open to the Court to decide whether Respondents 1 and 4 to 11 have acquired any title and possession of the contracted property as that would not be germane for decision in the suit for specific performance of the contract for sale, that is to say in a suit for specific performance of the contract for sale the controversy to be decided raised by the appellant against Respondents 2 and 3 can only be adjudicated upon, and in such a lis the Court cannot decide the question of title and possession of Respondents 1 and 4 to 11 relating to the contracted property.”

From the above decision, it is clear that only parties to the agreement of sale are necessary and proper parties. Since the proposed appellants as well as proposed respondent Nos.7 to 17 are not parties to the suit, the decree, if any, passed by the Court below is not binding on them. As the proposed appellants are claiming title through the proposed respondent Nos.7 to 17, they have to work out their remedies elsewhere, but not by filing the present appeal. Therefore, the appeal has to be dismissed.

9. Accordingly, A.S.M.P.No.648 of 2015 is dismissed and the Appeal Suit is dismissed.

K.C.BHANU, J

M.SEETHARAMA MURTI, J

APRIL 30, 2015

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DATE: 30.04.2015

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