

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

**CIVIL REVISION PETITION No.1391 of 2015**

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**ORDER:**

In spite of service of notice on the first respondent, none appears for the first respondent.

The petitioner herein is the first plaintiff in O.S.No.574/2007 on the file of the Court of the learned XIV Additional District and Sessions Judge, R.R. District. The second plaintiff died and his legal representatives were brought on record and they are respondents 3 to 5 herein. The suit was filed for specific performance of an agreement of sale dated 28.02.2005 in respect of an agricultural land admeasuring Ac.5.13 guntas in Survey Nos.184, 185, 186 and 195 situated at Prakash Nagar, Begumpet Village, Balanagar Mandal, R.R.District. The first respondent filed I.A. No.544/2014 seeking to come on record as the third defendant. A counter was filed and after hearing the parties the trial Court allowed the application by order dated 07.02.2015, challenging which the present Civil Revision Petition was filed.

As stated above, the present proceedings arise out of the suit for specific performance. The petitioner herein and respondents 3 to 5 are the plaintiffs and the sixth respondent is the defendant. The case of the proposed party, who wants to come on record as the defendant, is setting up independent title. The said application was contested by the petitioner herein by filing a detailed counter. It appears that there are separate proceedings pending before the revenue authorities with regard to claim of the first respondent as against the sixth respondent. Be that as it may, in a suit for specific performance the parties to the agreement alone shall be the parties. This Court in a recent judgment in a case of **Pelimelly Ramesh v. E.Sravan Kumar** elaborately considered the entire case law relating to the impleadment of parties in a suit for specific performance and held that the parties, who claimed to have purchased a part of property under a registered sale deed during the pendency of suit, are entitled to be impleaded as parties to the proceedings, but they

cannot be permitted to take defences which are not available to their vendors as held by the Supreme Court in **Thomson Press (India) Limited v. Nanak Builders & Investors P. Ltd.** In the said judgment, the three Judge Bench decision of the Supreme Court in **Kasturi v. Iyyamperumal** was considered in paragraph No.16 thereof and it reads as follows:

“16. In **Kasturi V. Iyyamperumal**, 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.** [AIR 2008 SC 2134]. In the said case, the Supreme Court held that the reliance placed by the Division Bench in **Anil Kumar Singh V. Shivnath Mishra** [1995 (3) SCC 147], 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.”

In view of the above, since the first respondent herein is claiming an independent title as against the sixth respondent herein, the first respondent cannot be impleaded in a suit for specific performance. Hence, the impugned

order dated 07.02.2015 is accordingly set aside and the application filed by the petitioner in I.A.No.544/2014 is dismissed.

Accordingly, this Civil Revision Petition is allowed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

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**A.RAMALINGESWARA RAO, J**

23.11.2015

MVA

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