THE HON'BLE SRI JUSTICE A.V. SESHA SAI

CIVIL REVISION PETITION No.4083 of 2014

ORDER:

This is a revision filed against the order, dated 17-09-2014 passed by the learned Senior Civil Judge, Karimnagar in I.A.No.1214 of 2013 in O.S.No.25 of 2006. The revision petitioner is a third party to the suit.

Heard Sri N. Hari Prasad, learned counsel for the petitioner, Sri P. Shravan Kumar Goud, learned counsel for respondent No.1, Sri Babuji Thenneti, learned counsel for respondent Nos.5 and 6 and Sri B. Jithendar, learned counsel for respondent No.7 apart from perusing the material available before the Court.

The first respondent herein instituted the present suit against the rest of the respondents herein for specific performance of agreement of sale, dated 08-12-2004. In the said suit the petitioner herein filed the present application in I.A.No.1214 of 2013 under the provisions of Order I Rule 10 r/w.28 of the Code of Civil Procedure seeking his impleadment as defendant No.8 in the suit.

The plaintiff/first respondent herein filed a counter, resisting the said application. The learned Senior Civil Judge, by way of an order, dated 17-09-2014 dismissed the said application. The present revision assails the said order passed by the learned Senior Civil Judge, Karimnagar.

It is contended by the learned counsel for the petitioner that the order under revision is erroneous, contrary to law and is opposed to the very spirit and object of provisions of Order I Rule 10 of the Code of Civil Procedure. It is also submitted by the learned counsel that had the contents of the affidavit filed in support of the application been considered by the learned Senior Civil Judge from proper perspective, the order under revision would not have emanated. It

is also contended by the learned counsel that the suit schedule property is the ancestral property and the petitioner herein has interest in the said property. It is also the submission of the learned counsel for the petitioner that earlier in I.A.No.1748 of 2007 the 7th respondent herein was permitted to come on record, as such there is absolutely no justification on the part of the Court below to refuse the relief in favour of the petitioner herein. In support of his submissions and contentions, learned counsel for the petitioner placed reliance on the judgments reported in 2013 (4) ALD 138 (DB) and 2014 (6) ALT 447.

On the contrary, it is submitted by the learned counsel for the respondents that the petitioner herein is neither a proper nor a necessary party for the issue involved in the suit and there is no *prima facie* evidence to show that the property involved in the suit is ancestral property. It is also contended by the learned counsel that the present application filed by the petitioner herein at the stage of argument deserves no consideration and obviously it is an attempt to drag on the proceedings to the extent possible.

In the above background now the issues that emerge for consideration of this Court, in the present revision are:

1. *Whether the order under revision is in accordance with law ?*
2. *Whether the order impugned warrants any interference of this Court under Article 227 of the Constitution of India?*

The information available before this Court candidly discloses that the first respondent herein instituted the suit as long back as on 03-02-2006 before the Court of learned Senior Civil Judge, Karimnagar for specific performance of agreement of sale, dated 08-12-2004.

In the said suit, admittedly, when the suit is coming up for arguments the petitioner herein filed the instant I.A.No.1214 of 2013 under Order I Rule 10 of

the Code of Civil Procedure, seeking his impleadment as 8th defendant in the suit. In the affidavit filed in support of the application, it is the case of the petitioner herein that the suit schedule property is the ancestral property and he is one of the coparceners. It is also the case of the petitioner herein that due to his personal and business activities he has no knowledge of the suit proceedings and few days' back he learnt about the proceedings in the present suit.

The plaintiff/first respondent herein filed a counter contending, *inter alia*, that the petitioner herein is not having lawful rights over the suit schedule property and after filing of the suit, for the purpose of creating problems another brother of the petitioner namely Sardar Bacha Singh filed O.S.No.19 of 2007 on the file of the learned Junior Civil Judge, Karimnagar for partition and separate possession against the petitioner herein and also the respondent/plaintiff. It is further stated in the counter that in the said suit it is clearly mentioned that Sardar Jit Singh's legal heirs have alienated the suit schedule property in favour of the first respondent/ plaintiff. The petitioner herein was arrayed as second defendant in the said suit and appeared before the said Court in the year 2007 and the petitioner had knowledge about the alienation also. It is also stated that despite his impleadment as 7th respondent, Sardar Bacha Singh remained silent. It is also stated that the petitioner herein is attending before the Court on each and every date of hearing on behalf of the other respondents herein to know the status of the suit regularly. It is also the case of the first respondent/plaintiff that the petitioner herein filed the instant application with the collusion of other defendants in the suit to delay the proceedings and that there are no bonafidees in the present revision.

The learned Senior Civil Judge, in the impugned order recorded a categoric finding that the petitioner failed to file any instrument or document or material to *prima facie* show that the property involved in the suit is ancestral property. The learned Judge took into consideration the stage of the suit, which is coming up for arguments. The learned Judge also took into consideration the parameters and the scope of enquiry in a suit for specific performance of

contract of sale. It is also observed by the learned Judge that the issue whether the plaintiff is entitled for specific performance of agreement of sale in respect of the suit schedule property has to be proved by the plaintiff. Obviously, taking into consideration of all these aspects the learned Judge passed the impugned order and dismissed the application filed by the petitioner herein.

Coming to the judgment cited by the learned counsel for the petitioner, in case of ***I. AGA REDDY AND OTHERS v. S. DHARNEET SINGH AND ANOTHER,*** a Division Bench of this Court held that the application filed under Order I Rule 10 of the Code of Civil Procedure need not depend upon existence of absolute right and it would be sufficient, if the parties have some interest in the property, which is subject-matter of suit.

In the instant case, as per the material available the learned Judge held that there is absolutely no *prima facie* evidence to show any semblance of right of the petitioner herein. As such the said judgment would not render any assistance to the petitioner herein.

In case of ***DARJI KRISHNA MURTHY AND OTHERS v. M. SHANKAR REDDY AND OTHERS,*** this Court at paragraph No.22 of the said judgment held as under:

> *22. Coming to the case on hand, the suit agreement of sale was executed as long back as in 09.11.1999 and the 1st respondent herein instituted the present suit on 22.12.2011 and the proposed parties / petitioners herein are tracing out their right to the property by virtue of a registered sale agreement-cum-General Power of Attorney dated 06.08.2011. Therefore, it cannot be said that the said transaction is hit by Section 52 of the Transfer of Property Act. Another significant aspect in the present case is that the defendants 1 to 3 remained exparte and they are not contesting the suit. Therefore, the persons prima facie likely to be effected are the petitioners in the event of granting decree by the Court below in favour of the plaintiff. Keeping in view the law laid down by the Supreme Court, the provisions of Order I Rule 10 CPC and Section 16(b) of the Specific Relief Act and the pre suit transaction by registered document dated 06.08.2011, this Court deems it appropriate that the proposed parties / petitioners herein are proper and necessary parties for the litigation for the present lis for effective adjudication of the issue involved in the present lis.*

In the considered opinion of this Court, the facts and circumstances of the case

are entirely different from the factual scenario in the above-referred judgment. The contingency present in the above-referred judgment is conspicuously absent in the present case. Therefore, the above-referred judgment would also render no assistance.

In the circumstances, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the petitioner herein has failed in making out a case, warranting any interference by this Court under Article 227 of the Constitution of India.

For the aforesaid reasons, the Civil Revision Petition is dismissed. There shall be no order as to costs. The Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.V. SESHA SAI, J

March 27, 2015

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THE HON'BLE SRI JUSTICE A.V. SESHA SAI

CIVIL REVISION PETITION No.4083 of 2014

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March 27, 2015

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