

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL REVISION PETITION No.2899 of 2015

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Date:01.10.2015

Between:

B.K. Pokerna

... Petitioner.

AND

Smt. A. Bharati and others.

...Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL REVISION PETITION No.2899 of 2015

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ORDER:

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This revision is preferred challenging order dated
15-06-2015 in I.A.No.24 of 2010 in O.S.No.635 of 2006 on the file of Principal Junior
Civil Judge, Sangareddy, Medak District.

2. Petitioner herein filed O.S.No.635 of 2006 seeking declaration that the person who executed Document No.10156/2003 dated 28-10-2003 in office of Sub-Registrar, Sangareddy as agent and GPA holder of Sarvasri Tataiah, Noorullah Khan, R. Satyanarayana,

J. Krishopher, J. Raju and Smt. J. Sundaramma in favour of Koduru Venkateswara Prasad is not Kamalesh Lohade and Document No.10156/2003 executed in favour of Koduru Venkateswara Prasad as illegal and consequently other documents executed by Koduru Venkateswara Prasad in favour of C. Laxmika Reddy and the Document Nos.11481, 11482, 11483 and 11484 of 2005 dated 01-09-2005 are illegal, fabricated, baseless and liable for cancellation with immediate effect. Plaintiff also prayed for consequential mandatory injunction to direct defendants 6 to 9 to cancel those documents with immediate effect and for costs of the suit. Plaintiff filed the above I.A.No.24/2010 to implead Kamalesh Lohade as second plaintiff to the suit. According to affidavit filed in support of the petition, the suit was drafted by his earlier counsel and after the death of his previous counsel, late Kamalchand Jain, he appointed the present counsel, who after looking into the file, advised him to implead Sri Kamalesh Lohade as plaintiff No.2 as he is a necessary and proper party to the suit who is a direct victim of fraud and misrepresentation before the Registrar of Assurance, which resulted in fabrication of suit documents by the defendants. He further contended that by impleading Kamalesh Lohade nature of the suit or cause of action will not be changed and therefore, he may be permitted to implead said Kamalesh Lohade as second plaintiff. This application was resisted by the respondents herein. Respondents 1 to 5 filed counter to the said application and contended that plaintiff has no cause of action and he, as P.W.1 made certain admissions, which are sufficient to dismiss the suit and to drag on the proceedings, now he introduced the present petition. It is contended that Kamalesh Lohade cannot be added as a party for the following reasons:-

(a) From the date of impleading the present plaintiff No.2,
it has to be treated that the suit is filed on the date of his impleading.

(b) From the evidence of Kamalesh Lohade, who is examined as P.W.2 that on knowing about somebody executed sale deed on behalf of Kamalesh Lohade, a cancellation deed in Document No.12334/2006, dated 11-05-2006 was executed and impleading him as a party to the suit is a futile

exercise.

- (c) The cause of action to set aside void document arose to Kamallesh Lohade on the date of his knowledge i.e., 11-5-2006, but the impleading petition was filed four years after the date of knowledge as such the claim is hopelessly barred as per Articles 56, 58, 59 and 113 of Limitation Act.
- (d) The cause of action for the plaintiff-petitioner and proposed plaintiff Kamallesh Lohade is not one and the same and the said Kamallesh Lohade has to file separate suit if he so wants.
- (e) On account of addition of Kamallesh Lohade as plaintiff No.2, consequential amendment of plaint may give rise to new cause of action, which cannot be permitted.

3. Respondents 6 to 9 also objected in impleading petition and on a consideration of contentions and rival contentions of both parties, trial Court dismissed the application holding that plaintiff having examined the said Kamallesh Lohade as P.W.2 he is not a necessary party, and that on account of impleading the second plaintiff, entire nature of the suit will be changed. Aggrieved by the dismissal of Order 1 Rule 10 application, present revision is preferred.

4. Heard both sides.

5. Advocate for revision petitioner submitted that plaint was drafted by an advocate practicing on criminal side and he completely lost sight of Kamallesh Lohade, who is the main important person to decide the issue involved in the suit. He submitted without impleading Kamallesh Lohade, the relief sought by plaintiff is not available to him and by impleading the proposed party, there will not be any change in the cause of action or in the nature of suit and even in the consequential amendment, plaintiff only sought that wherever plaintiff is occurred, it may be corrected as plaintiffs except that there is no change therefore, the objection of the respondents is not tenable. He further submitted that the question of limitation does not arise in this case and the objection of the respondents with regard to limitation is untenable. It is

further contended even if the objection of the respondents with regard to limitation is valid that aspect cannot be decided in this application and it has to be decided only in the suit. He further contended that no prejudice will be caused to the respondents on account of impleading Kamalesh Lohade as second plaintiff.

6. On the other hand, advocate for respondents 1 to 5 contended that proposed plaintiff i.e., Kamalesh Lohade is only a GPA holder to the real owners and the real owners have not questioned any of these sale deeds. He further submitted that apart from plaintiff, there are four other purchasers and they have not questioned the transactions when the original owners have not questioned the transactions till now the proposed party i.e., Kamalesh Lohade being an agent of real owners has no right. He further submitted that the very prayer in the plaint is to cancel those documents on the ground that the person executed those documents is not Kamalesh Lohade and plaintiff has already examined said Kamalesh Lohade as a witness, therefore presence of Kamalesh Lohade as party is not at all necessary and the present petition is filed only to drag the proceedings to overcome the admissions that are made by plaintiff as P.W.1 during his evidence. It is submitted that the trial Court has rightly dismissed the application and that there are no grounds to interfere with the findings of the trial Court.

7. Learned Advocate for petitioner placed reliance on the decision of the Hon'ble Supreme Court in **R.R. NAIDU vs. STATE OF M.P.** and decision of Madras High Court in **KUMARASAMI PILLAI vs. PALANI**, on the point of limitation.

8. Now the point that would arise for my consideration in this revision is whether order of the Court below is legal, proper and correct?

9. **Point:-** As already referred above, plaintiff filed petition under Order 1 Rule 10 CPC seeking permission to implead one Kamalesh Lohade as plaintiff No.2. According to plaintiff, presence of said Kamalesh Lohade is essential to decide the main relief that is claimed in the suit. In the affidavit filed in support of the petition,

only ground urged is that after the death of his previous counsel, the petitioner engaged present counsel, who on verification of the record, advised that Kamalesh Lohade has to be impleaded as plaintiff No.2, therefore, he filed the application under Order 1 Rule 10 CPC seeking permission. Except that, affidavit is silent as to how presence of Kamalesh Lohade is necessary for deciding the issues involved in the suit. Admittedly, present application is filed after chief-examination of the said Kamalesh as P.W.2 in the suit. Respondents resisted the application on two grounds; firstly that the nature of suit and cause of action will be totally changed, therefore, the petition is not maintainable; secondly claim of proposed party is barred by limitation. As rightly pointed out by Advocate for revision petitioner, limitation aspect may not be relevant in this application, because it is a mixed question of fact and law and that has to be gone into in the suit provided the proposed party is impleaded as a second plaintiff.

10. Therefore, now it has to be seen whether the plaintiff has made out any grounds to permit him to implead said Kamalesh Lohade as second plaintiff. As rightly pointed out by Advocate for respondents, the affidavit filed in support of the Order 1 Rule 10 petition is very vague and the only reason assigned is that his present counsel advised him to implead Kamalesh Lohade. Plaintiff has not assigned any reasons as to how the presence of Kamalesh Lohade is necessary and how the presence is relevant in deciding issues involved in the suit. Admittedly, plaintiff examined the Kamalesh Lohade as a witness and he is yet to be cross-examined. It is also not in dispute that Kamalesh Lohade is not the original owner of the suit property and he is only a General Power of Attorney holder to the real owners have not at all challenged these transactions. During course of arguments, it is submitted that proposed plaintiff i.e., Kamalesh Lohade is also a victim at the hands of the respondents. If really that is so when Kamalesh Lohade has not taken any legal action against the defendants till now, he has to explain how he can join in the suit as second plaintiff when the cause of action for him against the defendants is distinct and separate. As rightly observed by the trial Court, presence of proposed party would no way help the Court in adjudicating the issues involved in the suit, on the other hand, it would further complicate the case. Learned trial Judge has elaborately considered the contentions and rival contentions of both sides and came to a right conclusion that the presence of Kamalesh Lohade is not at all necessary for

deciding the issues involved in the suit. On a scrutiny of the material, I do not find any illegality, irregularity or wrong exercise of jurisdiction by the trial Court to be interfered by this court by exercising revisional powers.

11. For these reasons, I am of the considered view that the revision is devoid of merits and accordingly dismissed. No costs.

12. As a sequel, miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:01.10.2015

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