

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
CIVIL REVISION PETITION No.3049 of 2015

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07.08.2015

Between:

Koganti Sri Lakshmi

...Petitioner

And

Kolla Sambasiva Rao and others

...Respondents

Counsel for the petitioner: Mr.P.Vijaya Kiran

Counsel for the respondents: --

The Court made the following:

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ORDER:

This civil revision petition arises out of order, dated 10.04.2015, in I.A.No.1360 of 2014 in A.S.No.56 of 2011 on the file of II Additional District and Sessions Judge, Guntur.

I have heard Mr.P.Vijaya Kiran, learned counsel for the petitioner and perused the record.

Respondent No.1 filed O.S.No.923 of 2009 on the file of II Additional Junior Civil Judge, Guntur, for perpetual injunction restraining the petitioner from causing obstruction for free flow of rain water and other excess water from his land shown as ABCD into the petitioner's land shown as BIGH in the plaint plan, and for mandatory injunction directing the petitioner to remove the recently raised bunds of 1 ½ feet height all along BEH as shown in the plaint plan. The petitioner resisted the said suit. However, by judgment, dated 11.02.2011, the trial Court decreed the suit. Assailing the said judgment and decree, the petitioner/defendant filed A.S.No.56 of 2011. During the pendency of the appeal, respondent No.1, the original plaintiff, sold the suit schedule property to respondent No.2. Therefore, the petitioner filed an Interlocutory Application seeking his impleadment. The said I.A. was allowed by the lower appellate Court and respondent No.2 was impleaded as a respondent to the appeal.

The petitioner again filed I.A.No.1360 of 2014 for impleadment of respondent No.3 on the ground that after purchase, respondent No.2 sold the property to respondent No.3 during the pendency of the appeal. The lower appellate Court dismissed the said I.A., by order, dated 10.04.2015, by observing that the sale made in favour of respondent No.3 pending the appeal is hit by the doctrine of *lis pendens* and that the judgment that will be passed in A.S.No.56 of 2011 will bind him.

Under Section 52 of the Transfer of Property Act, 1882 (for short 'the Act'), any transfer of property pending the suit or proceeding, which is not collusive and in which any right to immoveable property is

directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

In the instant case, though the right to immovable property sold by the original plaintiff pending the appeal and the subsequent sale by the purchaser is not directly and specifically in question, however, the right of the owner of such property to let the water flow through the property of the petitioner is subject matter of the suit as well as the appeal. Therefore, perhaps, the provisions of Section 52 of the Act may apply. Even assuming that the said provision is not attracted, being the subsequent purchaser, respondent No.3 has not only a right but also duty to pursue the litigation, which is left by his previous vendors. If he does not do so, it will be at his peril and as rightly observed by the lower appellate Court, judgment in the pending appeal will bind him, provided he had knowledge of pendency of such appeal. In the light of these facts, I do not find any illegality or jurisdictional error in the order of the lower appellate Court. However, the petitioner is permitted to issue a notice to respondent No.3 informing him of the fact of pendency of the appeal and in such event, if respondent No.3 himself comes before the Court and seeks himself to be impleaded in the appeal, the lower appellate Court shall allow such application.

Subject to the above observations and directions, the Civil Revision Petition is disposed of.

As a sequel to disposal of the Civil Revision Petition, C.R.P.M.P.No.4086 of 2015 filed by the petitioner for interim relief shall stand disposed of as infructuous.

(C.V.NAGARJUNA REDDY, J)

07th August, 2015
GHN