

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.5342 of 2013

%11-08-2015

#Patturu Vishnu Kumar Petitioner.

Versus

\$1. Rudraraju Satyanarayana Raju and others
Respondents.

< **GIST:**

> **HEAD NOTE:**

!Counsel for the petitioner : Sri M.Venugopala
Rao

^ Counsel for R-1 : Sri P.Sridhar Reddy

^ Counsel for R-2 to R-5 : Smt. K.Pallavi

^ Counsel for R-6 : -Not necessary party -

? Cases referred

1. 2010(5) ALD 24 (SC)
2. 1992(2) SCC 524
3. 2007(10) SCC 82
4. 2005(6) SCC 733

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION No.5342 of 2013

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ORDER:

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This Civil Revision Petition is filed under Article 227

of the Constitution of India challenging the order dt.16-07-2013 in I.A.No.188 of 2013 in O.S.No.140 of 2009 of the I Additional District Judge, Nellore.

2. The petitioner herein is 2nd defendant in the suit. The said suit had been filed by respondent Nos.2 to 5 originally against the father of 6th respondent by name Ramanaiah alleging that the said Ramanaiah executed an agreement of sale dt.02-11-1995 in favour of late Putturu Kallaiah, who is the paternal grand father of respondent Nos.2 to 5. They claimed that under the said agreement of sale, late Kallaiah had been put in possession of the subject land which is an extent of Ac.3.00 in Sy.No.12/3 of Gurivindapudi village, Manubolu Mandal of Nellore District and that under a registered Will dt.22-4-1996 executed by him, the said property devolved on them after the death of Kallaiah on 04-12-1999.

3. The said suit was transferred to the Court of I Additional District Judge, Nellore and renumbered as O.S.No.140 of 2009 initially and later again renumbered as O.S.No.181 of 2014 on transfer to the Court of VII Additional District Judge, Gudur, Nellore District. Therefore, in this order, O.S.No.140 of 2009 would be referred to as O.S.No.181 of 2014.

4. In the said suit, the 1st respondent herein filed an application under Order I Rule 10 CPC to implead him as 4th defendant. He alleged that on 11-09-2003, Venkata Ratnam, father of respondent Nos.2 and 3, Kondaiah, father of 4th respondent and Mathanaiah, father of 5th respondent had executed an agreement of sale in his favour and received consideration of Rs.1 Lakh from him as advance; thereafter respondent Nos.2 and 3 and Mathanaiah, father of 5th respondent executed two registered sale deeds dt.10-07-2006 in his favour in respect of an extent Ac.2.00 of land out of the suit extent of Ac.3.00 and put him in possession of the property on the same day. He further alleged that father of 4th respondent by name Kondaiah obtained permission from the Principal District Court, Nellore for sale of the remaining Ac.1.00 of land which fell to the share of 4th respondent, a minor, by filing O.P.No.377 of 2007, and it was allowed on 11-11-2008. He therefore contended that out of extent Ac.3.00 cents, which is subject matter of O.S.No.181 of 2014, since he has purchased Ac.2.00 under registered sale deeds dt.10-07-2006 as referred to above, and since these facts have been suppressed by respondent Nos.2 to 5 in O.S.No.181 of 2014, he has to

be considered as *bonafide* purchaser of a portion of the suit schedule property and therefore he is necessary party to the suit and he may be impleaded so that he can protect his right, title and interest in the suit schedule property.

5. This application was opposed by petitioner, who alleged that the suit schedule property was purchased by his father Ramanaiah under registered sale deed dt.28-08-1968 and that he had executed a registered settlement deed dt.28-12-2005 in favour of petitioner. He further contended that respondent Nos.2 to 5 cannot place any reliance on the Will alleged to have been executed by Kallaiah, under which they claimed to have a vested remainder and that the said Will is invalid and not binding on petitioner since Kallaiah himself had no title to the plaint schedule property. He therefore contended that respondent Nos.2 to 5 had no right either to execute an agreement of sale or execute a sale deed in favour of 1st respondent and

1st respondent would not get any right over the plaint schedule property since his vendors have no title.

6. Respondent Nos.2 to 5 also filed a counter opposing the impleadment of 1st respondent alleging that

1st respondent had filed a suit O.S.No.22 to 2005 for specific performance of the agreement of sale dt.11-09-2003, but the same had been dismissed and an appeal A.S.No.100 of 2012 against the said judgment had been filed by

1st respondent before the Family Court-cum-VI Additional District Judge, Nellore. They also alleged that 1st respondent had filed O.S.No.91 of 2007 against petitioner and 6th respondent for declaration of his title and possession of the plaint schedule property therein and to cancel the deed of settlement dt.28-12-2005 allegedly executed by 6th respondent in favour of petitioner. They also contended that 1st respondent is not a party or attestor in the agreement of sale dt.02-11-1995, which is subject matter of O.S.No.181 of 2014 and therefore he is not a necessary or proper party therein. They alleged that 1st respondent is already a party in O.S.No.91 of 2007 and therefore there is no necessity to implead him as 4th defendant in O.S.No.181 of 2014.

7. By order dt.16-07-2013, the Court below allowed the said application on payment of costs of Rs.500/- each to petitioner as well as respondent Nos.2 to 6. It held that the property involved in O.S.No.91 of 2007 as well as

O.S.No.181 of 2014 is one and the same and 1st respondent is claiming that he purchased the property from respondent Nos.2 to 5 and is contending that he is a *bonafide* purchaser; since O.S.No.91 of 2007 and O.S.No.181 of 2014 have been clubbed, no prejudice would be caused, if 1st respondent is added as 4th defendant in O.S.No.181 of 2014. It held that even if the application for impleadment is filed at a belated stage, the petitioner and respondent Nos.2 to 6 can be compensated by costs.

8. Challenging the same, this Revision is filed.

9. The learned counsel for petitioner Sri V.Venugopala Rao contended that the Court below had not correctly exercised its discretion to implead the 1st respondent as 4th respondent in O.S.No.181 of 2014; the 1st respondent's alleged purchase either under agreement of sale dt.11-09-2003 or under registered sale deeds dt.10-07-2006 do not confer any right, title or interest on

1st respondent since respondent Nos.2 to 5 or their vendors, who are alleged to be the executants of these documents, do not have right, title or interest in the suit schedule property and the suit filed by respondent Nos.2 to 5 in O.S.No.181 of 2014 is still pending. He contended

that the mere fact that respondent Nos.2 to 5 are likely to obtain a decree for specific performance in O.S.No.181 of 2014 after the said suit is decided against the petitioner and 6th respondent and thereby feed the title conveyed by them in favour of

1st respondent will not make the 1st respondent a necessary and proper party, since the suit in question i.e. O.S.No.181 of 2014 is a suit for specific performance of the agreement of sale dt.02-11-1995. He placed reliance on the judgment of the Supreme Court in **Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre & Hotels Pvt. Ltd. and others**^[1].

10. Smt. K.Pallavi, learned counsel appearing for respondent Nos.2 to 5 adopted the contentions of the learned counsel for petitioner.

11. The 6th respondent is shown as not necessary party in the Revision.

12. Sri P.Sridhar Reddy, learned counsel for 1st respondent, however, refuted the above contentions and supported the order passed by the Court below. He alleged that the plaint schedule property is originally the property of Kallaiah, paternal grandfather of respondent

Nos.2 to 5/plaintiffs in O.S.No.181 of 2014; that he had three sons by name Venkata Ratnam, Kondaiah and Mathanaiah; respondent Nos.2 and 3 are the children of Venkata Ratnam, 4th respondent is the son of Kondaiah and 5th respondent is the daughter of Mathanaiah; Kallaiah had executed a registered Will dt.22-04-1996 giving life estate to his sons Venkata Ratnam, Kondaiah and Mathanaiah and vested remainder to respondent Nos.2 to 5; on 11-09-2003, an agreement of sale in respect of the suit schedule property was executed in favour of

1st respondent by Venkata Ratnam, Kondaiah and Mathanaiah, in respect of which O.S.No.22 of 2005 had been filed; the said suit had been dismissed and A.S.No.100 of 2012 against the judgment therein has been pending before the Family Court-cum-VI Additional District Judge, Nellore; that 1st respondent is in physical possession of the suit schedule properties; the suit O.S.No.181 of 2014 is a collusive suit and therefore the 1st respondent was rightly impleaded in the said suit by the Court below to enable him to protect his interest in the property. He also relied on the judgment in **Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay**^[2].

13. I have noted the submissions of both sides.

14. From the facts narrated above, it is clear that the subject matter of both O.S.No.181 of 2014 and O.S.No.22 of 2005 (A.S.No.100 of 2012) as well as O.S.No.91 of 2007 is same property.

15. There is a suit O.S.No.181 of 2014 for specific performance instituted originally as O.S.No.53 of 2006 by respondent Nos.2 to 5 against Ramanaiah, father of petitioner and 6th respondent alleging that the said Ramanaiah had executed the agreement of sale dt.02-11-1995 promising to sale the extent of Ac.3.00 in Sy.No.12/3 of the above village to Kallaiah, their grandfather. Therefore even according to respondent Nos.2 to 5, the original owner of the suit schedule property of extent Ac.3.00 in Sy.No.12/3 is Ramanaiah. Admittedly, the suit O.S.No.181 of 2014 seeking specific performance of the said agreement of sale is still pending. Only if respondent Nos.2 to 5 succeed in the said suit, they would get title to the said property.

16. According to 1st respondent, on 11-09-2003 there is another agreement of sale executed by Venkata Ratnam, Kondaiah and Mathanaiah in his favour in respect of

Ac.3.00 of land and Ac.2.00 of this land was subsequently registered under two sale deeds dt.10-07-2006 executed by respondent Nos.2 to 5. On the day when these sale deeds had been executed, it is not disputed that respondent Nos.2 to 5's suit O.S.No.181 of 2014 being pending, they may not have title to the property, which they could convey to 1st respondent. However, that would change in case O.S.No.181 of 2014 is decreed in favour of respondent Nos.2 to 5 wherein at least for Ac.2.00 of land the 1st respondent would get title under the principle of feeding the grant by estoppel incorporated under Section 43 of the Transfer of Property Act, 1882. But that stage had not yet reached since O.S.No.181 of 2014 is still pending.

17. Therefore the status of 1st respondent as on the date when he filed I.A.No.188 of 2013 is that that a person who is likely to secure the right or interest in the suit schedule property in O.S.No.181 of 2014 after it is decided in favour of his vendors respondent Nos.2 to 5.

18. In **Mumbai International Airport Pvt. Ltd.** (1 supra), the Supreme Court held :

“8. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not

seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of Code of Civil Procedure ('Code' for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

'Court may strike out or add parties.

(2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.'

The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the question involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party. A 'necessary party' is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a 'necessary party' is not impleaded, the suit itself is liable to be dismissed. A 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the

decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance." (emphasis supplied)

19. The Supreme Court in the above decision has explained its earlier decisions reported in **Sumtibai Vs.**

Paras Finance Co., ^[3] and **Kasturi Vs. Iyyamperuma** ^[4]

and clarified that in a suit for specific performance, a tenant who is in physical possession of property which is subject matter of a suit for specific performance, or a co-owner of the suit schedule property may be impleaded. It explained the observations in **Sumtibai** (3 supra) to mean that although the Court observed therein that in a suit for specific performance, only the parties to the contract or any legal representative of a party to the contract, or a transferee from a party to the contract are necessary parties, the Court had not lay down that no one, other than these persons can be impleaded even as a proper party. It also held that its observations in **Sumtibai** (3 supra) (that a person need not have any subsisting right or interest in the suit schedule property for being impleaded as a defendant and that even the person who is likely to acquire an interest therein future in appropriate case is

entitled to be impleaded as a party) by stating that the said decision did not lay down any proposition that anyone claiming to have any semblance of title is a necessary party. It held that in a suit for specific performance of contract filed against the Airport Authority of India in respect Airport premises leased out to the appellant before it by the Airport Authority of India for operation, maintenance, development and for modernization, application for impleadment of the appellant therein cannot be allowed since the appellant had no right, title or interest in the suit schedule property and no relief was sought against the appellant. It held that merely because the appellant expected to get a lease from the Airport Authority of India in the event of dismissal of suit, it cannot be said to be a person having some semblance of title in the property in dispute. In my considered opinion, this judgment applies on all fours to present case since the 1st respondent's position, as on the date of filing I.A.No.188 of 2013 before the Court below, was akin to a person likely to secure right, title and interest in the schedule property after the suit O.S.No.181 of 2014 was decided in favour of respondent Nos.2 to 5. So it will not make the 1st respondent a necessary party or proper party to the said suit filed for specific performance of agreement of

sale dt.02-11-1995.

20. In **Ramesh Hirachand Kundanmal** (2 supra) relied upon by the learned counsel for 1st respondent, no doubt the Supreme Court observed as under :

“12. Sinha, J. speaking for the majority said that a declaratory judgment in respect of a disputed status will be binding not only upon parties actually before the Court but also upon persons claiming through them respectively. The Court laid down the law that in a suit relating to property in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest in the subject-matter of the litigation. Where the subject-matter of a litigation is a declaration as regards status or a legal character, the rule of presence of direct interest may be relaxed in a suitable case where the Court is of the opinion that by adding that party it would be in a better position effectually and completely to adjudicate upon the controversy. In cases covered by the statutory provisions of Sections 42 and 43 of the Specific Relief Act, the Court is not bound to grant the declaration prayed for on a mere admission of the claim by the defendant. If the Court has reasons to insist upon a clear proof apart from the admission, the result of a declaratory decree on the question of status such as the controversy in that suit affects not only the parties actually before the Court but generation to come and in view of that consideration, the rule of present interest as evolved by case law relating to disputes about property does not apply with full force. Applying the propositions enunciated to the facts of the case, the Court came to the conclusion that the courts below did not exceed their power in directing the addition of respondents 1 and 2 as parties defendants in the action nor it could be said that the exercise of the discretion was not bound.”

21. But in the very same judgment, the Court had also

observed that the person to be joined must be one whose presence is necessary as a party, and it is not merely sufficient if he has an interest in the correct solution of some question involved. It held that the Court must come to the conclusion that the issue involved in the suit cannot be effectually and completely settled unless he is impleaded as a party, and that it is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Also in that case, the Court was dealing with a suit for declaration of title and not with a suit for specific performance. So I am of the opinion that the said judgment has no application to the present case. In fact this judgment had also been considered in **Mumbai International Airport Pvt. Ltd** (1 supra) at para-11 therein.

22. However, the learned counsel for 1st respondent sought to contend that O.S.No.181 of 2014 filed by respondent Nos.2 to 5 against the petitioner and 6th respondent is a collusive suit and only if 1st respondent is allowed to be on record he can expose this. There is no plea of collusion between respondent Nos.2 to 5 and petitioner and 6th respondent in I.A.No.188 of 2013. In the affidavit filed in support of I.A.No.188 of 2013, there is a

plea that respondent Nos.2 to 5 have suppressed about the agreement of sale dt.11-09-2003 and the sale deeds dt.10-07-2006, but there is no allegation against Ramanaiah, father of petitioner and 6th respondent.

23. Although the learned counsel for 1st respondent also sought to contend that Kallaiah is the owner of the property, I am afraid that the said question cannot be gone into in the suit O.S.No.181 of 2014 filed by respondent Nos.2 to 5 for specific performance against the petitioner and 6th respondent by allowing the 1st respondent to get impleaded. If the said issue is allowed to be raised, it would result in converting the suit for specific performance filed by respondent Nos.2 to 5 against petitioner and 6th respondent into a suit for declaration of title of the suit schedule property and alter the very nature of the suit.

24. In this view of the matter, I am of the opinion that the Court below was not correct in allowing I.A.No.188 of 2013. Therefore, its order dt.16-07-2013 in I.A.No.188 of 2013 in O.S.No.140 of 2009 (O.S.No.181 of 2014) is set aside. The Civil Revision Petition is allowed, and I.A.No.188 of 2013 is dismissed. No costs.

25. It is however made clear that the decision herein

would not have any bearing on any rights claimed by 1st respondent and the observations made in this order have to be confined only to the present Revision since these observations are necessary for the disposal of this Revision. It is open to 1st respondent to avail any other remedy available to him at law against other respondents and petitioner.

26. As a sequel, miscellaneous petitions pending if any, in these Revisions shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 11-08-2015

Vsv/*

[\[1\]](#) 2010(5) ALD 24 (SC)

[\[2\]](#) 1992(2) SCC 524

[\[3\]](#) 2007(10) SCC 82

[\[4\]](#) 2005(6) SCC 733