

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No.804 of 2015

Date: 28-12-2015

Between:

Duddu Sri Ramulu

.... Petitioner

AND

Parimi Raja and another

.... Respondents

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No.804 of 2015

ORDER:

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The defendant in O.S.No.182 of 2012 on the file of VI Additional Senior Civil Judge, Vijayawada, is the petitioner herein. The said suit was filed by the 2nd respondent herein for declaration of title in respect of the plaint schedule property of an extent of 266.66 square yards situated in R.S.No.20, Plot No.15 of Vidhyadharapuram, Vijayawada, Krishna District.

The 1st respondent herein filed I.A.No.98 of 2014 stating that the 2nd respondent herein who was original plaintiff agreed to sell the plaint schedule property to him on 01-12-2011 and executed an agreement of sale-cum-General Power of Attorney in his favour and the said document was registered. On the said date, he paid an amount of Rs.13,80,000/- to him and paid remaining balance of Rs.2,000/- on 07-12-2011. In pursuance of the said agreement of sale-cum-General Power of Attorney, he got executed and

registered the same in his favour on 19-06-2014 in the office of District Registrar, Vijayawada. He further states that his vendor delivered vacant possession of the plaint schedule property to him on 07-12-2011. He also states that he has been in continuous uninterrupted possession of the said property and he came to know about the pendency of the proceedings in 2014. He filed the said application seeking his impleadment as the 2nd plaintiff in the suit.

A counter was filed by the petitioner herein stating that the petition was filed with the sole intention to drag on the proceedings in connivance with the plaintiff. If at all the petitioner has got any right, he has to file a separate suit seeking his relief and he cannot be impleaded in the present suit. He did not state the sources of information of the pendency of the present proceedings before the Court.

The trial Court observed that the plaintiff did not protest and it means that he has no objection about the petitioner being impleaded as the 2nd plaintiff. It also observed that by impleading the petitioner as one of plaintiffs, the character of the suit is not going to be changed. He is a person having interest in the *lis* or the dispute, and the controversies in the suit can be finally determined once for all in the presence of all the parties without delay, inconvenience, expenses as held by the Supreme Court in **Basant Kumar Soni v. Mukund Das Soni and others** (2014 (4) ALT 790). The Court also observed that no effective decree can be passed in the absence of the petitioner. Accordingly, it allowed the application by order dated 05-12-2014.

Learned counsel for the petitioner submits that the proposed party ought not to have been impleaded as a 2nd plaintiff without

deciding the point of limitation or his *prima facie* right over the property. Learned counsel for the 1st respondent, on the other hand, submits that since the original plaintiff sold away the property, he is not evincing any interest in the suit and his interest would be prejudiced, if he is not impleaded as a party to the suit.

I have carefully perused the plaint and there is no whisper with regard to the execution of the agreement dated 01-12-2011 or delivery of possession on 07-12-2011 to the 1st respondent. On the other hand, the plaintiff claimed that he continued to be in possession of the property till filing of the suit, but he did not choose to contest the application filed by the 1st respondent herein seeking impleadment.

With regard to *prima facie* title, the plaintiff claimed to have purchased the property under a registered sale deed dated 05-03-2011 from one Rentala Veerabhadra Rao by way of registered sale deed. The case of the defendant is that he purchased plot No.15 under a registered sale deed dated 30-03-1996 belonging to one Paleti Veera Raghavaiah, which is part of a layout in an extent of Ac.8.50 cents having 111 plots approximately. It is also his case that he took delivery of the said land on the same date, but since the said land was involved in Urban Land Ceiling proceedings, the extent of 246 square yards purchased by him was allotted to him by the Government treating the said land as excess land. A subsequent document was registered on 10-02-2012. He applied to Vijayawada Urban Development Authority for regularization of the unauthorised plot and a certificate was issued on 22-02-2012 regularising the same. The defendant also got published a paper notification in Eenadu Telugu daily on 07-02-2014 cautioning the

public about illegal and void document in respect of the said land. Thus, the title claimed by the plaintiff is subsequent to the date of purchase by the defendant. But, these are only *prima facie* observations based on the averments made in the plaint and written statement.

In the present case, we are concerned with the issue whether an agreement holder whose agreement was subsequently registered during the pendency of the suit can be brought on record as 2nd plaintiff in the suit?

This Court had an occasion to consider the case of impleadment of a party in a suit for specific performance of the agreement decided in **Pelimelly Ramesh and others v. E. Sravan**

Kumar & others^[1] wherein it was held as follows:

“.....It is well settled in law that in case of impleadment of parties, it is not the jurisdiction of the Court, but the judicial discretion which has to be exercised keeping in mind all the facts and circumstances of a particular case. In the present case, the application is filed by persons, who claimed to have purchased a part of property under a registered sale deed pending the suit. Though they ought to have been aware of the paper publication taken by the Plaintiff prior to the institution of the suit and the pendency of the suit, as the vendors were made parties to the proceedings, their legal rights in the property would be affected by the proposed decree, if it is passed in favour of the plaintiff. The petitioners did not explain the reason for filing the application belatedly after five years. Almost all the defendants in the suit have not contested. Though defendant No.9 filed a written statement, he did not participate in the subsequent proceedings.

In the circumstances, justice would demand the application of the petitioners be permitted subject to payment of costs of Rs.5,000/- to the plaintiff with a condition that they cannot be permitted to take defences which are not available to their vendors as held by the Supreme Court in Thomson Press (India)

Ltd. case (2013 (3) ALD 111 (SC).....”

On the basis of the averments in the plaint, the present petitioner/1st respondent herein cannot be said to be having a cause of action as the declaration of title and injunction are based on the purchase of the property by the original plaintiff on 05-03-2011 under a registered sale deed and his claim of continuous possession from that date to the date of filing of the suit consequent to the threat of his possession on 12-02-2012. These facts cannot be pleaded by the present applicant in I.A.No.98 of 2011, who claims to have purchased at a later point of time on 07-12-2011 and took delivery of possession on the same date. No threat to such possession was averred by the proposed plaintiff in his petition. The title of the proposed plaintiff would be subject to the title of the original plaintiff. If the original plaintiff gets title to the land, it would enure to the benefit of the proposed plaintiff. With regard to the possession, there are conflicting versions of the original plaintiff and the proposed plaintiffs.

In view of the same, the application in I.A.98 of 2014 is not maintainable and accordingly the same is dismissed by setting aside the order dated 05-12-2014 passed by the VI Additional Senior Civil Judge, Vijayawada in I.A.No.98 of 2014 in O.S.No.182 of 2012. Consequently, C.R.P. No.804 of 2015 is allowed.

A. RAMALINGESWARA RAO, J

Date: 28-12-2015

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[\[1\]](#) 2015 (4) ALD 284