

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

CIVIL REVISION PETITION No.4527 of 2014

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.16-10-2014 in I.A.No.642 of 2014 in O.S.No.91 of 2002 of the Senior Junior Civil Judge, Kadapa.

2. The 1st respondent herein filed the said suit against respondent Nos.2 to 4 for partition of the plaint schedule properties, and for separate possession of 1/4th share in item Nos.1 and 2 of the plaint schedule therein. The said suit was decreed on 31-08-2009.

3. The respondent Nos.2 to 4/defendant Nos.2 to 4 then filed A.S.No.6 of 2010 before the Principal District Judge, Kadapa. The said appeal was allowed on 02-04-2013, the judgment of the trial Court was set aside, and the matter was remitted back to the trial Court for fresh consideration giving liberty to both parties to mark documents. The Court below was directed to dispose of the suit by taking into consideration of those documents.

4. In the meantime, it appears that a gift deed dt.03-12-2009 was executed by 2nd respondent in favour of petitioners herein in respect of item No.1 of the plaint schedule.

5. Therefore, the petitioners herein filed I.A.No.642 of 2014 under Order I Rule 10 (2) C.P.C. to get impleaded in the suit as defendant Nos.4 and 5.

6. By order dt.16-10-2014, the Court below dismissed the said I.A. It held that since the gift deed was executed on 03-12-2009, at the time when the appeal was pending, doctrine of *lis pendens* would apply and it is not necessary to implead the petitioners since they would be bound by the decree passed in the suit. It also held that it is an attempt on the part of petitioners to complicate and delay the pending suit and to drag on the matter.

7. Heard Sri V.R. Reddy Kovvuri, learned counsel for petitioners and Sri K.Murali Krishna, learned counsel for 1st respondent. None appears for respondent Nos.2 to 4 even though they are served.

8. Order I Rule 10(2) C.P.C. empowers the Court at any stage of the proceedings, either upon or without the application of either party to implead any person who ought to have been joined, whether as plaintiff or defendant to effectually and completely to adjudicate upon and settle all the questions involved in the suit.

9. Order XXII Rule 10 CPC states that in cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such

interest has come or devolved.

10. Admittedly, the gift deed in question was executed by 2nd respondent allegedly in favour of petitioners during pendency of appeal in A.S.No.6 of 2010 on the file of the Principal District Judge, Kadapa, which was allowed and remanded on 02-04-2013 to the trial Court. Therefore, there was devolution of interest allegedly in favour of petitioners pending the suit.

11. No doubt doctrine of *lis pendens* would operate making the transferee bound by the decision in the suit. The issue in the suit is whether or not subject matter of the suit is joint family property and the question whether item No.1 is the exclusive property of 2nd respondent or not is also an issue. It is possible that 2nd respondent, who has allegedly gifted the property to petitioners might not contest the suit since she no longer has any interest in the property. In which event, the rights of petitioners claimed in item No.1 of property would get seriously affected. It is also possible that respondent Nos.2 to 4 in the suit might not defend the suit as regards the claim of petitioners in respect of item No.1 on the basis of alleged gift deed.

12. In the interest of justice, I am of the opinion that the petitioners should be allowed to come on record to

ensure that the rights of 2nd respondent in the property are also decided in their presence. No prejudice is caused to 1st respondent if petitioners are allowed to come on record. Therefore, I am of the opinion that the Court below ought not to have rejected the application under Order I Rule 10 CPC filed by petitioners.

13. In ***Devendra Kumar Sarewgee v. Purbanchal Estates (P) Ltd***^[1], the Supreme Court held:

“11. This Court after detailed consideration of the case-law in *Raj Kumar v. Sardari Lal*¹ has held that the transferee *pendente lite* is treated in the eye of the law as a representative-in-interest of the judgment-debtor and bound by the decree passed against the judgment-debtor. In case of an assignment, creation or devolution of any interest during the pendency of any suit, Order 22 Rule 10 CPC confers a discretion on the court hearing the suit to grant leave to the person in or upon whom such interest has come to vest or devolve to be brought on record. Bringing on a lis pendens *transferee* on record is not as of right but in the discretion of the court.

12. To the similar effect is the judgment of this Court in *Amit Kumar Shaw v. Farida Khatoon*². It has been observed as follows: (SCC p. 411)

“The doctrine of lis pendens applies only where the lis is pending before a Court. Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the Court has a discretion to make him a party. But the transferee pendente lite can be added as a proper party if his interest in the subject-matter of the suit is substantial and not just peripheral. A transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, whether the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is

under no obligation to make a lis pendens transferee a party; under Order 22 Rule 10 an alienee pendente lite may be joined as party. As already noticed, the Court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The Court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where the transferee pendente lite is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case.”

14. In **Amit Kumar Shaw v. Farida Khatoon**^[2], the

Supreme Court held :

“16. The doctrine of lis pendens applies only where the lis is pending before a court. Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the court has a discretion to make him a party. But the transferee pendente lite can be added as a proper party if his interest in the subject-matter of the suit is substantial and not just peripheral. A transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, where the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party, under Order 22 Rule 10 an alienee pendente lite may be joined as party. As already noticed, the court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where his predecessor-in-interest is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case.”

15. In this view of the matter, the Civil Revision Petition is allowed, and the order dt.16-10-2014 in I.A.No.642 of 2014 in O.S.No.97 of 2002 of the Senior Junior Civil Judge, Kadapa is set aside, and the said I.A. is allowed. It is made clear that this Court has not expressed any opinion as to the genuineness of the gift deed dt.03-12-2009 said to have been executed by 2nd respondent in favour of petitioners or the claim of petitioners and 2nd respondent that item No.1 of the plaint schedule property is exclusive property of 2nd respondent. No costs.

16. As a sequel, all miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 06-03-2015

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[\[1\]](#) (2006) 9 SCC 199

[\[2\]](#) (2005) 11 SCC 403