

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4714 of 2010

ORDER:

Assailing the order dated 11.08.2010 passed in I.A.No.274 of 2008 in O.S.No.2 of 2001 on the file of the III Additional Senior Civil Judge, Ranga Reddy District the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

The facts in issue are as under:

The plaintiffs, who are respondent Nos.1 to 3 herein filed O.S.No.2 of 2001 seeking declaration of title and consequential injunction in respect of land admeasuring Ac.1.28 gts., in Sy.No.53/A,B,C, situated at Canara Nagar Colony of Peerjadiguda Village, Ranga Reddy District. Pending the said suit, the petitioner herein filed I.A.No.274 of 2008 to implead it as defendant No.4 in the suit. In the affidavit filed in support of the said I.A. it has been stated that they are the absolute owners and possessors of land admeasuring 2271 square yards part of Sy.No.53, having purchased the same through three registered sale deeds bearing document Nos.8626 of 2007, 9804 of 2007 and 9805 of 2007 from its earlier owners M.Ravindra Reddy, Y.Srirama Reddy and K.Satyanarayana Reddy through their A.G.P.A. Holders Kota Kedarnath and Smt.K.Swarnamanjari.

It has been stated that one Bandi Jangaiah, Bandi Anjaneyulu and Bandi Yadaiah being the original owners of land in Sy.No.53 of Peerjadiguda Village, jointly sold the above mentioned land in favour of Smt. Bongu Mallamma, W/o. B.Sai Reddy through registered sale deed bearing document No.2900 of

1978, dated 27.05.1978. The said Mallamma appointed one M.V.R.Raju as her attorney through registered G.P.A.No.35 of 1999. The said Bongu Mallamma through her attorney holder sold part of the said land in favour of the vendors of the petitioners herein through registered sale deed bearing document No.32 of 2001, dated 03.01.2001. It is stated that the vendors of the petitioner sold the said land to Smt. Swarnamanjari vide document No.12661 of 2006 and the balance of 600 square yards infavour of Kota Kedarnath through A.G.P.A. bearing Nos. 19840, 19841, 19842 and 19843 of 2006, dated 15.12.2006. It is further stated in the affidavit that the said purchasers, who purchased the property through Agreements of sale-cum-G.P.A. documents have executed sale deeds representing the vendors in respect of entire extent of land ie. 2271 square yards in favour of the petitioner and was put in possession of the property. Thereafter, the petitioner is alleged to have obtained permission and constructed a building with ground and two upper floors vide proceedings Nos. GPP/265/07 and GPP/266/07, dated 07.09.2007. It is further stated that the plaintiffs in the suit without having any right are trying to grab the alleged property by obtaining injunction orders though the petitioner is in possession of the said property. It is alleged that the plaintiffs along with their G.P.A. holder obstructed the developmental activity of the petitioner and when the workmen of the petitioner firm questioned the same, they disclose about the pendency of the suit before the Court. Hence, the petitioner filed a petition to implead as defendant No.4 in the above suit.

A counter came to be filed opposing the same. It is alleged that the sale deeds relied upon by the petitioner are created

without any legal entitlement and as such the said documents cannot be relied upon. It is stated that the vendors of the proposed defendant do not have any right over the property as such the question of alienation by them in favour of the proposed defendant would not arise. It is stated that all the documents which are relied upon by the proposed defendant are created only to grab the property. Hence, it is urged that the application deserves no consideration and prays to dismiss the petition.

After considering the rival submissions, the learned trial Court dismissed the petition holding that the petitioner is not a proper and necessary party to the suit and that the dispute can be effectively and properly adjudicated upon in between the parties even in the absence of the petitioner herein i.e. proposed defendant. Challenging the same, the present revision is filed.

On 02.10.2010 this Court while admitting the revision granted interim stay as prayed for.

After obtaining consent from the counsel of both the parties and after service of notice by way of publication in local newspaper with regard to showing proof of service on respondent Nos.5 and 6, the matter was heard.

Learned counsel for the petitioner mainly submits that the order under challenge is illegal and improper. It is his case that an application to implead them as parties to the proceedings can be filed at any stage of the proceedings since substantial rights of the proposed defendant are affected. He further submits that in order to avoid multiplicity of litigation like filing of a separate suit for declaration and title and for consequential injunction it would be appropriate if the petitioner is given an opportunity to contest

the matter.

Learned counsel for the respondent/plaintiff opposed the revision reiterating the arguments that were advanced before the trial Court.

The scope and object of Order 1 Rule 10 of C.P.C. was considered in detail by a learned Single Judge of this Court in ***A.Gyaneshwar Rao v. Mahmood Shaireef and another***^[1] and held as under:

“10. The principles that could be said to emerge in regard to application of the provisions enacted in sub-Rule (2) of Rule 10 of O. 1. C. P. C. and in particular the expressions "whose presence before the court may be necessary" and "in order to enable the court to effectively and completely adjudicate upon and settle all then question involved in the suit" are:

(1) "Settle all the questions involved in the suit" should be construed to mean, not restricting the scope between the parties to the suit, but to a wider area concerning the subject-matter of the suit involving even the third party's claim and interest.

(2) The question of addition of parties under R. 10 (2) of O. 1 is generally not one of initial jurisdiction but of a judicial discretion which has to be exercised in view of the facts and circumstances of each case. The jurisdictional aspect is in the limited sense contemplated under Sec. 115 of the C. P. C.

(3) For effectual and complete adjudication of the questions involved in the suit, the presence of a third-party ,even if it is not necessary, but if proper, should be allowed to be added as a party if applied for.

(4) In a suit relating to property, the person to be added as party should have a direct interest as distinct from a commercial interest in the subject-matter of the litigation.

(5) Where the subject-matter of a litigation is a declaration as regards status or a legal character , the rule of present or 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 effectual and completely to adjudicate upon the controversy.

(6) The rule laid down in Sc. 43 of the specific Relief Act is not exactly a rule of res judicate. It is narrow in one sense and wider in another.”

The issue as to whether the maintainability of the application at the belated stage came up for consideration before this Court in ***K.Yogender Reddy and another v. K.Usha Rani and others***^[2] wherein a learned Judge of this Court held as under:

“A perusal of the Order I Rule 10 (2) of C.P.C. shows that it does not support this reasoning. The said provision envisages that 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, and 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 aforesaid provision does not anywhere bar impleadment of any party after the commencement of trial. On the contrary, sub-Rule (2) of Order X Rule 10 C.P.C. empowers the Court to strike out or add any party at any stage of the proceedings, if it feels it just and that the presence of such party is necessary to enable itself to effectually and completely adjudicate upon and settle all the questions involved in the suit.”

Similar view was taken by this Court in ***V.Narayana Reddy v. Rani Narayanan and another***^[3] wherein this Court held as under:

“The object of sub-rule (2) of Rule 10 of Order I of C.P.C. is to bring before the Court all the persons who are parties to the disputes relating to one subject matter so that the disputes may all be determined at the same time without delay, inconvenience and expense of separate actions, so that the Court may be in a position to adjudicate upon and settle all the questions involved in the suit and the disputes between the parties attain finality. Order I, Rule 10 (2) of C.P.C. confers wide discretion upon the Court. The provision is expressly provided in the C.P.C. so as to meet the situation and ensure that rendering of justice to the parties is not hampered.”

From the two judgments referred to above, the observations of the trial Court that the petitioner has approached the Court at a belated stage cannot be accepted.

The other objection raised by the learned counsel for the plaintiffs was that since the transfer of property took place pending litigation before the Courts without leave of the Court, the transferee has no right seeking impleadment in the suit. In support of the same, he relied upon the Judgment of the Apex Court in ***Bibi Zubaida Khatoon v. Nabi Hassan Saheb and another***^[4]. In the said case, the petitioner therein is alleged to have purchased the suit property in the year 1996 from the original plaintiff and as thus, acquired in his place the right of redemption of the mortgaged suit property. In the cross suit of the opposite party seeking specific performance of the agreement of sale based on the same acquisition of title during pendency of suit, the petitioner was sought to implead him in the said suit as a defendant. The trial Court rejected the request of joinder of the petitioner in the above two suits observing that the property

having been purchased during pendency of the suit, the decree passed in the suit shall bind the transferee *pendente lite*. The High Court in its revisional jurisdiction declined to interfere with the order. Challenging the same, the parties have approached the Apex Court. The Apex Court held as under:

“It is not disputed that the petitioner purchased the property during pendency of the suit and without seeking leave of the Court as required by Section 52 of the Transfer of Property Act. The petitioner being a transferee *pendente lite* without leave of the Court cannot, as of right, seek impleadment as a party in the suits which are long pending since 1983. It is true that when the application for joinder based on transfer *pendente lite* is made, the transferee should ordinarily be joined as a party to enable him to protect his interest. But in the instant case, the trial Court has assigned cogent reasons for rejecting such joinder stating that the suit is long pending since 1983 and *prima facie* the action of the alienation does not appear to be *bonafide*.”

From the judgment referred to above, it appears that the trial Court as well as the High Court mainly proceeded on a footing that the suit is pending since 1983 and *prima facie* the action of alienation does not appear to be a bonafie one. The Court held that there was an attempt on the part of the petitioner to complicate and delay the pending suit.

The said judgment in my view may not apply to the case on hand. It is true that the property was purchased by the proposed defendant/petitioner during pendency of O.S.No.2 of 2001. It is the case of the petitioner herein that he was not aware about the transaction and also pendency of the suit at the time of purchase and that he came to know about the pendency of the suit only when the plaintiffs in the suit tried to obstruct the developmental

activities of the petitioner. It is the case of the petitioner that after obtaining permission from the municipality, the petitioner spent huge amount by raising structures over the said land. Under those circumstances, the judgment relied upon by the learned counsel for the plaintiffs that the proposed defendant should have sought the leave of the Court before purchasing the property cannot be accepted. The possession of the proposed defendant is strongly denied by the plaintiffs on the ground that all the documents relied upon by the petitioner are forged and fabricated, in my view it would be appropriate if the petitioner is added as defendant, so that the Court will have all the facts before it for arriving at a just decision. As observed, the possibility and the apprehension of the petitioner herein that there is every likelihood of collusion between the plaintiffs and defendants who are alleged to have sold the property in favour of the petitioner cannot also be ignored.

For the aforesaid reasons, the Civil Revision Petition is allowed. There shall be no order as to costs.

Miscellaneous Petition, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

17.03.2016
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[\[1\]](#) AIR 1982 AP 155 (1)

[\[2\]](#) (2015) 1 ALD 173

[\[3\]](#) (2009) 4 ALD 13

[\[4\]](#) (2004) 1 SCC 191