

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT

CIVIL REVISION PETITION No. 4481 of 2016

ORDER:

Despite service of notice, appeared none on behalf of the respondents. In the circumstances, this Court has no option, except to proceed with the matter based on the material available on record.

Vide present Civil Revision Petition, the petitioners sought to assail the order dated 09.06.2016 passed in I.A.No.1593 of 2015 in O.S.No.205 of 2015 on the file of learned II additional District Judge, Guntur.

The petitioners herein, who are the plaintiffs in the aforesaid suit, filed I.A.No.1593 of 2015 under Order I Rule 10 CPC seeking to implead proposed respondents 5 to 7 as Defendants 5 to 7 and for consequential amendment of the plaint.

The case of petitioners herein before the Court below as well as before this Court is that they filed the aforesaid suit for specific performance against respondents 1 to 4/Defendants 1 to 4 basing on the agreement of sale said to been executed by Respondent No.1/Defendant No.1. In the written statement filed by Respondents 2 to 4/Defendants 2 to 4, it is stated that on 24.09.2014 they have executed registered gift deeds in favour of their respective wives and therefore their wives/proposed parties are the proper and necessary parties to the suit.

The Court below opined that in the affidavit filed by the petitioner/plaintiff, it was averred that the first respondent/first defendant executed the agreement in favour of the petitioner/plaintiff. Later on the first respondent/first defendant sold the property to Respondents 2 to 4/Defendants 2 to 4, and so, even though the first respondent/first Defendant alone executed the agreement as he sold the property to respondents 2 to 4/Defendants 2 to 4. Subsequently, the petitioner/plaintiff was forced to file the suit against Respondents 1 to 4/Defendants 1 to 4. After filing the suit, Respondents 2 to 4/Defendants 2 to 4 have executed the gift deed in favour of their respective wives. Therefore the application filed by the petitioners/plaintiffs to implead the proposed parties/wives of Respondents 2 to 4/Defendants 2 to 4 is liable to be dismissed inasmuch as the real dispute is between first respondent/first defendant on one hand and petitioners/plaintiffs on the other hand. Since respondents 2 to 4/Defendants 2 to 4 are subsequent purchasers, it can be said that they are proper and necessary parties. Since proposed parties simply stepped into the shoes of Respondents 2 to 4/Defendants 2 to 4, it can be said that the proposed parties are not the proper and necessary parties to the suit litigation. The Court below further recorded that if the proposed parties are added, their contention would be that respondents 1 to 4/Defendants 1 to 4 have no right in the plaint schedule property and the proposed parties alone have right in the suit schedule property. It means that the interest of proposed parties is adverse

to the interest of first respondent/first defendant. The Court below relied on the decision of the Apex Court in *Kasturi Vs. Iyyamperumal* {2005 (3) ALD 83}, wherein it was observed that the purchaser of a suit property subsequent to the suit agreement would be a necessary party as he would be affected if he had purchased it with or without notice of the contract, but a person who claims a title adverse to that of the vendor will not be a necessary party.

In the case of *Kasturi* (supra), the only question that arose for consideration was, whether in a suit for specific performance of contract for sale of a property instituted by a purchaser against the vendor, a stranger or a third party to the contract, claiming to have an independent title and possession over the contracted property, is entitled to be added as party-defendant in the said suit. The Honourable Supreme Court answered the said issue in Paragraph 7 of its judgment that a purchaser is a necessary party as he would be affected if he had purchased with or without notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party.

Keeping in view the facts noted hereinabove and settled law in *Kasturi's* case (supra), I am of the considered opinion that the Court below erred in dismissing the application. Accordingly the order under revision is set aside. Consequently I.A.No.1593 of 2015 in O.S.No.205 of 2015 stands allowed and proposed parties are brought on record as Defendants 5 to 7.

The Civil Revision Petition is allowed accordingly.
Miscellaneous petitions pending consideration if any in the Civil
Revision Petition shall stand closed in consequence. No order as
to costs.

JUSTICE SURESH KUMAR KAIT

DATED 27th December, 2016.
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