

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.350 of 2014

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful plaintiff is directed against the order dated 05.12.2013 of the learned VI Additional District Judge (Judge, Fast Track Court), Warangal at Mahabubabad passed in I.A.No.305 of 2013 in O.S.No.20 of 2013 filed by the plaintiff under Order I Rule 10(1) read with Section 151 of the Code of Civil Procedure, 1908 seeking permission to implead the respondents 2 to 6 as defendants 2 to 6 in the suit.

2. I have heard the submissions of the learned counsel for the revision petitioner/plaintiff and the learned counsel appearing for the 5th respondent, who is one of the proposed defendants. I have perused the material record.

3. The facts necessary for consideration, in brief, are as follows:-

3.1 The sole plaintiff brought the suit against the 1st respondent/sole defendant for specific performance of the agreement of sale dated 15.12.2012 *inter alia* stating in the plaint that the sole defendant is the owner and possessor of the suit schedule property. While the said suit, which is being resisted by the sole defendant is pending, the plaintiff filed the subject application requesting for permission to implead the respondents 2 to 6 herein as defendants 2 to 6 in the suit *inter alia* contending in his affidavit filed in support of the said request as follows: "The suit is filed for specific performance against the sole defendant for specific performance of the agreement of sale dated 15.12.2012. The sole defendant had purchased the suit schedule property from the proposed defendants 2 to 4 on 07.02.2012; and since then, he was in possession of the property. The sole defendant had agreed to sell the property to the plaintiff. He had, therefore, executed the agreement of sale agreeing to sell the suit schedule property to the plaintiff. However, on the failure of the defendant to perform his part of the contract, the instant suit for specific performance was filed by the plaintiff. The defendants 2 to 4, who are the

owners of the suit schedule property, know the subsistence of the suit agreement of sale executed in favour of the plaintiff by the sole defendant in respect of the suit schedule property. But, in fact, with the active connivance of the 1st defendant, they had alienated the suit schedule property in favour of the proposed 5th defendant through three registered sale deeds dated 27.02.2013 bearing numbers 2705/2013, 2706/2013 and 2707/2013, duly registered in the Office of the Sub-Registrar, Mahabubabad. The proposed 5th defendant is also aware of the suit sale agreement executed in favour of the plaintiff by the sole defendant. The said sale deeds were brought into existence with a sinister design to delay and defeat the just claim of the plaintiff and to deprive him of the relief claimed in the suit. In view of the subsequent events, it has become necessary to implead the proposed defendants 2 to 5 as defendants 2 to 5 and also the Sub-Registrar, Mahabubabad, Warangal district i.e., the proposed 6th defendant as the 6th defendant in the suit for registering the documents ignoring the objection of the plaintiff. The addition of the proposed defendants as defendants to the suit is necessary for proper disposal of the suit.'

3.2. The proposed defendants 2 to 4 had remained *ex parte*. The sole defendant filed a counter resisting the petition *inter alia* contending as follows: - 'The material allegations in the plaint as well as the in the affidavit filed in support of the petition are all false. This defendant is contending that the suit for specific performance is itself not maintainable as the plaintiff had failed to perform her part of the contract and that the agreement to sell stood cancelled and the earnest money thereunder stood forfeited. The allegations that this defendant connived with his vendors and that they had sold the property in favour of the proposed defendant no.5 is false. This defendant has nothing to do with the sale of the suit schedule land. The allegations that the sale deeds all dated 27.02.2013 were brought into existence with connivance of this defendant are false. A copy of the agreement of sale dated 07.02.2012 executed in favour of the 1st defendant by his vendors is furnished to the plaintiff. Therefore, he is aware of the said agreement of sale even by the time of suit agreement of sale dated

15.12.2012. Therefore, nothing prevented the plaintiff from making the vendors of the 1st defendant as parties to the suit at the time of institution of the suit. This defendant has no knowledge about the notice said to have been issued to the Sub-Registrar, Mahabubabad. The petition is not maintainable. Since the suit agreement stood cancelled, the suit itself is liable for dismissal.'

3.3 The proposed 5th defendant had also filed a counter resisting the petition *inter alia* contending as follows: - 'The material allegations in the plaint as well as the in the affidavit filed in support of the petition are all false. This proposed defendant is not aware of the alleged agreement of sale dated 15.12.2012 in favour of the plaintiff by the 1st defendant in respect of the suit schedule property. This proposed defendant enquired about the title and possession of the vendors before entering into the contract of sale and on satisfying that the vendors are the owners and possessors of the lands covered by the sale deeds all dated 27.02.2013, this proposed defendant had purchased the property. The plaintiff or anybody else never raised any objection. The physical possession of the property was delivered to this proposed defendant. Since the date of the sale transactions in favour of this proposed defendant, he is in peaceful possession and enjoyment of same as owner of the property without any interference from any quarter. The 1st defendant had no right, title and interest or possession over the suit land to enter into any alleged agreement of sale with anybody. The plaintiff is no way concerned with the sale transactions between the proposed 5th defendant and his vendors. This proposed 5th defendant, in the facts and circumstances of the case, cannot be termed as a subsequent purchaser. The right accrued under alleged agreement of sale can be enforced only against the executant but not against third parties. This proposed defendant is neither a proper nor a necessary party. The petition is filed with a real intention to blackmail this proposed defendant and make a wrongful gain by creating legal hurdles with false litigation. The petition may be dismissed.

3.4. On merits, the Court below, by the impugned order, dismissed the application of the plaintiff *inter alia* holding as under: “Admittedly the sole defendant is not the owner of the suit schedule property. He has no right to convey the same to the plaintiff by means of the suit agreement of sale. The sole defendant had entered into the suit agreement of sale with the plaintiff in his individual capacity. The plaintiff’s suit for specific performance against the sole defendant, who is not the owner of the property and who is only an agreement holder from the defendants 2 to 4 in respect of the suit schedule property, is misconceived. The defendants 2 to 4 had never ratified the suit agreement of sale executed by the sole defendant; when the sole defendant is not the owner of the suit schedule property, the question to implead the defendants 2 to 6 as parties to the suit does not arise for consideration.’

3.5. Feeling aggrieved of the said orders, the plaintiff, had preferred this Civil Revision Petition.

4. While reiterating his pleaded case, the plaintiff would further contend as follows: ‘The defendants 2 to 4 are the absolute owners of the suit schedule property; and, they had entered into an agreement of sale with the sole defendant; and pursuant to that agreement, the sole defendant had executed the suit agreement in favour of the plaintiff. Later, to defeat the just claim of the plaintiff, the proposed defendants 2 to 4, in active connivance with the sole defendant, had sold the suit schedule property under three registered sale deeds to the proposed 5th defendant. They are all aware of the plaintiff’s prior agreement of sale. In spite of a legal notice raising objection for registration of documents, the proposed 6th defendant, the Sub-Registrar, Mahabubabad, has registered the sale deeds in favour of the 5th defendant ignoring the objection of the plaintiff. Therefore, for proper and effective disposal of the suit, the addition of the proposed defendants as parties to the suit is necessary. The Court below ought to have granted permission to the plaintiff to implead the proposed defendants 2 to 5 and also the Sub-Registrar, Mahabubabad, who has registered the sale deeds

in favour of the 5th defendant ignoring the objection of the plaintiff, as parties to the suit. The impugned order, which is passed without assigning valid reasons, is unsustainable under facts and law.'

5. On the other hand, the learned counsel for the proposed 5th defendant, while supporting the order of the Court below, had contended as follows: "The sole defendant had no right, title and interest, muchless valid title, in respect of the suit schedule property as on the date he had entered into the suit sale agreement with the plaintiff. When the sole defendant is not the owner of the suit schedule property, the suit instituted on an agreement of sale executed by him is misconceived and is liable for dismissal. The mere contention that the proposed 5th defendant is aware of the suit agreement of sale, without any material brought on record, is incorrect. The proposed 5th defendant is a *bona fide* purchaser. Since the proposed defendants 2 to 5 are not parties to the suit sale agreement, they are not necessary parties in a suit for specific performance." While praying for dismissal of the revision, the learned counsel had called in aid, the following decisions.

1. **Pelimelly Ramesh and others Vs. E.Sravan Kumar and others** ^[1]
2. **Syed Zainulla Abedin Vs. Aila Sathemma and others** ^[2]
3. **Smt. Annapoorani Ammal Vs. G.Thangapalam** ^[3]

6. A perusal of the aforementioned decisions would make it manifest that a suit for specific performance of contract can be decreed only against the executant of the contract having right to dispose of the suit property. In **Smt.Annapoorani Ammal** (3rd cited), the Supreme Court, while disposing of a Second Appeal, had succinctly stated the legal position that a suit for specific performance of contract can be decreed only against the executant of the contract having right to dispose of the suit property.

7. In view of the detailed narration of facts and the contentions supra, there is no need to further dilate the facts and the contentions, which are undisputed. As on the date, the suit agreement of sale was executed by the sole defendant in favour of the plaintiff, he is admittedly not the absolute

owner of the property as canvassed in the plaint. As per the submissions made before this Court, the sole defendant had only entered into an agreement of sale with the proposed defendants 2 to 4; and that as the plaintiff did not fulfil his obligations under the suit agreement of sale entered into with the sole defendant, the sole defendant in turn could not fulfil his commitment under his agreement of sale dated 07.02.2012 and that as such the original owners of the suit schedule property, i.e., the proposed defendants 2 to 4 had cancelled the agreement of sale executed in his favour. As rightly pointed out on behalf of the contesting respondents/proposed defendants it is not pleaded in the plaint that the sole defendant had agreed to obtain a sale deed from the proposed defendants 2 to 4 before performing his part of the contract under the suit sale agreement with the plaintiff. It is not the case of the plaintiff that the sole defendant had undertaken that he would perform his part of contract after duly obtaining a sale deed from the proposed defendants 2 to 4 or that the sole defendant had undertaken that he would execute the sale deed along with the proposed defendants 2 to 4 as co-vendors. On a plain perusal of the suit agreement of sale and from the undisputed facts, it is clear that the proposed defendants 2 to 4 and the proposed 5th defendant, who is the purchaser from the proposed defendants 2 to 4, are not parties to the suit sale agreement and that there is no privity of contract between the plaintiff on one hand and the proposed defendants 2 to 5 on the other. It is also urged on behalf of the proposed defendants that no one can convey a better title than what he has. Therefore, having regard to the admitted and undisputed facts and in the light of the discussion coupled with the reasons *supra* and in the light of the legal position obtaining, this Court is of the considered view that the proposed defendants 2 to 6 are not necessary and proper parties to the plaintiff's suit for specific performance of the suit agreement of sale entered into with the sole defendant.

8. Before concluding the discussion, it is apt to refer to the legal position obtaining, which squarely applies to the facts of the case on hand.

In ***Kasturi v. Iyyamperumal and Ors.***^[4], the facts disclose that in a suit for

specific performance of contract for sale an impleadment petition was filed for addition as party Defendant on the ground that the Petitioners were claiming not under the vendor but adverse to the title of the vendor. In other words, on the basis of independent title in the suit property the Petitioner was sought to be added as a necessary party in the suit. Rejecting the petition it was held by a three Judges' Bench of the Supreme Court as under:

As noted herein earlier, two tests are required to be satisfied to determine the question who is a necessary party, let us now consider who is a proper party in a suit for specific performance of contract for sale. For deciding the question who is a proper party in the suit for specific performance the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. Thus, the question is to be decided keeping in mind the scope of the suit. The question that is to be decided in a suit for specific performance of the contract for sale is to the enforceability of the contract entered into between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for title. Therefore, for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary at all.

In ***Anil Kumar Singh v. Shivnath Mishra alias Gadasa Guru***^[5], it has been held that since the applicant who sought for his addition is not a party to the agreement for sale, it cannot be said that in his absence, the dispute as to specific performance cannot be decided. In this case, the Supreme Court while deciding whether a person is a necessary party or not in a suit for specific performance of a contract for sale made the following observation:

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Since the Respondent is not a party to the agreement for sale, it cannot be said that without his presence the dispute as to specific performance cannot be determined. Therefore, he is not a necessary party.

(Emphasis Supplied)

Thus, the obtaining legal position does not support the case of the plaintiff herein.

9. Viewed thus, this Court finds that the order of the Court below does not warrant any interference in the facts and circumstances of the case.

10. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

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

M. Seetharama Murthi, J

30th March, 2016
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[\[1\]](#) 2015 (4) ALD 284

[\[2\]](#) Unreported decision dated 23.11.2015 passed in CRP No.1391 of 2015 by this Court

[\[3\]](#) (1989) 3 Supreme Court Cases 287

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

[\[5\]](#) 1995 (3) SCC 147