

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

CIVIL REVISION PETITION No.734 OF 2016

ORDER:

This revision petition is filed against the order, dated 29.10.2015, in I.A.No.901 of 2015 in O.S.No.769 of 2006 on the file of Principal Junior Civil Judge, Nandyal, wherein, the Court below allowed the application filed by respondent No.1 under Order I Rule 10 (2) read with Section 151 C.P.C. to implead him as defendant No.5 in the Suit.

2. The facts which are necessary for disposal of this revision petition are that petitioner Nos.1 to 3 filed the aforesaid Suit against respondent Nos.2 to 4 and one Y. Ramakka, mother of respondent Nos.2 to 4, for specific performance of agreement of sale, dated 13.12.1996, stating that the suit schedule property was sold to them. As petitioner No.3 died during pendency of the Suit, his legal representatives were brought on record as plaintiff Nos.4 to 8, who are petitioner Nos.4 to 8. The said Suit was initially decreed *ex parte* on 18.07.2011 and subsequently, the same was set aside. In the said Suit, respondent No.1 filed the present I.A. for impleading him as defendant No.5 in the Suit stating that he purchased Ac.0-10 cents of land covered by Survey No.2252/2 situated at S.B.I. Colony, Nandyal, from petitioner Nos.2 and 3 under a registered sale deed, dated 30.07.2008,

and Ac.0-42 cents of land covered by same Survey Number from Y.Ramakka, who is defendant No.1, and respondent Nos.2 and 4, who are defendant Nos.2 and 4, under a registered sale deed, dated 29.10.2008. It is also stated that the total extent of

Ac.0-52 cents of land belongs to the father of respondent Nos.2 to 4 by name Yagni Venkatanna as per the records maintained by the Sub- Registrar, Nandyal, and petitioner Nos.2 and 3 having purchased Ac.0-05 cents and Ac.0-05 cents of land from respondent No.3 under registered Sale Deeds, dated 27.06.2005 and 27.06.2005, respectively, bearing document Nos.3604/2005 and 307/2005, respectively, sold the

Ac.0-10 cents of land to him under a registered sale deed, dated 30.07.2008, bearing document No.4752/2008 and subsequently, he purchased the remaining Ac.0-42 cents of land from Y.Ramakka and respondent Nos.2 and 4 under a registered sale deed, dated 29.10.2008, and taken possession of the same. It is also stated that he filed O.S.No.769 of 2006 in respect of Ac.0-10 cents of land purchased by him from petitioners Nos.2 and 3 and on 06.08.2008, the petitioners agreed to not to press the Suit and signed on a consent agreement. It is also stated that the petitioners and respondent Nos.2 to 4 are close relatives. It is also stated that, initially, when the Suit was decreed *ex parte*, petitioners filed E.P.No.254 of 2011 and in the said E.P., he filed E.A.Nos.630 and 631 of 2012 to

declare that the *ex parte* decree is not binding on him and to appoint an Advocate Commissioner to note down the physical features.

3. Opposing the same, counter affidavit is filed by the petitioners stating that Ac.0-10 cents of land, which respondent No.1 is claiming to have purchased from petitioner Nos.2 and 3, is not the subject matter of the Suit. It is also stated that the document, dated 30.07.2008, is not a registered sale deed, but it is an agreement of sale – cum – General Power of Attorney without possession and thus, the consent agreement, dated 06.08.2008, is a fabricated document with forged signatures of petitioner Nos.2 and 3. It is also stated that as per the agreement of sale, dated 13.12.1996, petitioners are in possession of Ac.0-20 cents of land. It is also stated that respondent No.1 did not file any document to show that he is in possession of the suit schedule property as pleaded in the affidavit filed in support of the I.A. and since the agreement of sale – cum – General Power of Attorney, dated 30.07.2008, does not create any interest in favour of respondent No.1, he is not a proper and necessary party to the Suit.

4. Basing on the said pleadings, the Court below, by impugned order, dated 29.10.2015, allowed the I.A. Aggrieved by the same, the present revision petition is filed.

5. Sri N. Sriram Murthy, learned counsel for the petitioners, submits that the document Ex.P3, dated 30.07.2008, is not a registered sale deed, but it is an agreement of sale – cum – General Power of Attorney and as such, it does not create any interest in favour of respondent No.1 in respect of the suit schedule property, but the Court below, by relying on the decision in **K. Srinivasulu v. Jaldu Subramanyam Chettu and others**^[1], allowed the I.A. as respondent No.1 has given an impression that the documents, dated 30.07.2008 and 29.10.2008, are registered sale deeds. He submits that the aforesaid decision has no application to the facts of the case on hand since the purchase made therein was through registered sale deeds. He also submits that in a Suit for specific performance, third parties to the agreement may not be required, since their rights cannot be decided in such Suit. He also submits that respondent No.1 is claiming right over the subject matter of the Suit by relying on the documents, dated 30.07.2008 and 29.10.2008, and as such, rights of respondent No.1 cannot be decided in the present Suit filed for specific performance of agreement of sale, dated 13.12.1996. In support of his contentions, he relied on the decisions in **Anil Kumar Singh v. Shivnath Mishra alias Gadasa Guru**^[2], **Vijay Pratap and others v. Sambhu Saran**

**Sinha and others^[3] and Suraj Lamp and Industries
Pvt. Ltd. v. State of Haryana and another^[4].**

6. On the other hand, Sri M. Subba Reddy, learned counsel representing Ms. K. Rajitha, counsel for respondent No.1, submits that since respondent No.1 purchased Ac.0-10 cents of land through Ex.P3 much before the Suit is filed, he is a proper and necessary party to the Suit, since his rights will be effected even if the Suit is decreed or dismissed. He further submits that the judgments relied on by the learned counsel for petitioners have no application to the facts of the present case, since in those judgments sales were effected after filing of the Suit. He also submits that even in the E.P. filed by the petitioners, respondent No.1 has filed E.As. He also submits that respondent No.1 purchased Ac.0-10 cents of land from petitioner Nos.2 and 3 and Ac.0-42 cents of land from Y.Ramakka and respondent Nos.2 and 4 and as such, he has interest over the entire Ac.0-52 cents of land covered by Survey No.2252/2.

7. In this case, it is to be seen that respondent No.1, who filed the implead petition, is mainly relying on two documents, dated 30.07.2008 and 29.10.2008. Document bearing No.4752/2008, dated 30.07.2008, is said to have been executed by petitioner Nos.2 and 3 in in favour of respondent No.1 in respect of Ac.0-10 cents of land

covered by Survey No.2252/2. A reading of the said document goes to show that it is only an agreement of sale and nowhere it is mentioned that possession was handed over to respondent No.1. As per **Suraj Lamp and Industries Pvt. Ltd.**'s case (supra 4), an agreement of sale or General Power of Attorney will not confer any right or interest over the immovable property. Even the document bearing No.6210/2008, dated 29.10.2008, said to have been executed by Y.Ramakka and respondent Nos.2 and 4 in respect of Ac.0-42 cents of land also appears to be an agreement of sale and the same also will not confer any interest or title to respondent No.1. These two documents were marked as registered sale deeds and the Court below by treating them as sale deeds, allowed the I.A. by relying on the decision in **K. Srinivasulu**'s case (supra 1).

8. Admittedly, respondent No.1 is not a party to the Suit agreement. If respondent No.1 is claiming right over the suit schedule property by way of any agreement, he is entitled to file independent Suit for specific performance of the same, but as on today, no such Suit is filed basing on the so called agreement of sale – cum – General Power of Attorney. Though the learned counsel for respondent No.1 submitted that a compromise was entered on 06.08.2008, signed by petitioner Nos.2 and 3, the same was not marked before the Court below and whether such

agreement is valid or not cannot be decided in the present Suit filed for specific performance of agreement of sale, dated 13.12.1996. In **Anil Kumar Singh's** case (supra 2) and **Vijay Pratap's** case (supra 3), relied on by the learned counsel for petitioners, it is clearly held that third parties cannot be impleaded in a Suit for specific performance. In view of the same, the Court below by misconstruing the documents Exs.P3 and P4, basing on the judgment in **K. Srinivasulu's** case (supra 1), allowed the I.A. Hence, the impugned order passed by the Court below is liable to be set aside.

9. Accordingly, the revision petition is allowed setting aside the impugned order, dated 29.10.2015. As it is stated by the learned counsel for petitioners that petitioner No.1 is aged about 93 years and since the Suit is of the year 2006, the trial Court is directed to dispose of the Suit within a period of three months from the date of receipt of a copy of this order.

10. Miscellaneous Petitions, if any, pending in this revision petition, shall stand closed. No costs.

REDDY, J
March 22, 2016

A. RAJASHEKER

Note: Issue C.C. in one week.

B/o.MD

[\[1\]](#) 2014 (1) ALT 383

[\[2\]](#) (1995) 3 SCC 147

[\[3\]](#) (1996) 10 SCC 53

[\[4\]](#) AIR 2012 SC 206