

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2732 OF 2016

ORDER:

This revision, under Article 227 of the Constitution of India, is filed challenging the Order dated 09.12.2015 passed in I.A. No.1174 of 2014 in O.S. No.632 of 2009 by the XIV Additional Chief Judge (FTC), City Civil Court, Hyderabad, whereby the first respondent was permitted to come on record.

02. It is the case of the revision petitioner that she filed a suit for specific performance of agreement of sale dated 22.08.2004 whereby she purchased plot No.401 from the second respondent. The second respondent contesting the suit by filing written statement and trial was completed partly. At this stage, the first respondent-proposed party filed I.A. No.1174 of 2014 under Rule 10 of Order I of the Code of Civil Procedure, 1908 (for short, 'the Code') to come on record as second defendant to the suit on the ground that he purchased plot Nos.401, 407 and 503 from the second respondent under agreement of sale and filed a suit for specific performance of agreement of sale, and for recovery of mesne profits, rents, etc in O.S. No.233 of 1992 on the file of the Court of V Senior Civil Judge, City Civil Court, Hyderabad, and obtained Decree for specific performance of agreement of sale and so also for mesne profits and later mesne profits were ascertained and passed a Decree for liquidated sum towards mesne profits. In execution of the said Decree for recovery of mesne profits, the first respondent-proposed party filed E.P. No.92 of 2005 in O.S. No.233 of 1992 and brought the property for sale. In the meanwhile, the revision petitioner filed E.A. No.269 of 2011 under Rule 58 of Order XXI of the Code, which is pending before the Court.

03. The learned counsel for the revision petitioner mainly contended that suit for specific performance is between Vendee and

Vendor and the third party is not entitled to come on record except under Section 19 of the Specific Relief Act, 1963, who is a purchaser of the property subsequent to the execution of agreement of sale and before institution of the suit for specific performance and that in the absence of any privity of contract between revision petitioner and the first respondent-proposed party, latter cannot be allowed to come on record in a suit for specific performance. He further contended that the trial court did not consider the scope of trial in a suit for specific performance and erroneously permitted the first respondent-proposed party to come on record as a second defendant and the same is liable to be set aside.

04. Whereas, Sri Hari Haran, learned counsel for the first respondent-proposed party, contended that the revision petitioner herself filed E.A. No.269 of 2011 under Rule 58 of Order XXI of the Code to decide her claim in pursuance of the agreement of sale dated 22.08.2004 and it is pending, and the revision petitioner herself admitted about her interest in the other proceedings i.e. execution proceedings in E.P. No.92 of 2005 in O.S. No.233 of 1992, when the schedule property was brought for sale to realize the Decree debt for recovery of mesne profits, that itself sufficient which created the interest in the property and therefore, there is no error in the order and prayed to dismiss the revision.

05. The counsel for the second respondent supported the case of the revision petitioner.

06. Undisputedly, the suit is pending before the trial court for specific performance of agreement of sale. Specific Performance means compelling one party to the agreement to perform his obligation under the contract. Therefore, the scope of specific performance is limited for the purpose of compelling the defendant to perform their obligation or to enforce the terms of agreement and the third party rights cannot be decided in a suit for specific performance.

07. Admittedly the first respondent-proposed party filed a suit and obtained decree for recovery of mesne profits in O.S. No.233 of 1992, filed E.P. No.92 of 2005 for realization of mesne profits by attachment of plot No.401 i.e. schedule property for realization of the debt due to him. It is not on record that whether the attachment is subsequent to the execution of agreement of sale or prior to agreement of sale. Even assuming for a moment that the attachment was affected prior to agreement of sale dated 22.08.2004, such sale is always subject to attachment and the purchaser is bound by such attachment in view of Section 64 of the Code. But a Decree Holder in O.S. No.233 of 1992 is not entitled to come on record in a suit for specific performance, since he is neither proper party nor necessary party under Rule 10 of Order I of the code. Therefore, the first respondent-proposed party cannot be impleaded.

08. Learned counsel for the revision petitioner while contending that in a suit for specific performance, a third party cannot be allowed to come on record, placed reliance on two decisions of this Court reported in **MITTA SANJEEVA REDDY AND ANOTHER V. SHAIK FAKRUDDIN AND ANOTHER**^[1] and **D.SHOBHA AND OTHERS V. D.PRAMEELA KUMARI AND ANOTHER**^[2]. In both these decisions, this Court held that the general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order I Rule 10(2) of the Code, which provides for impleadment of proper and necessary parties. The said provision makes it clear that a Court may, at any stage of the proceedings, either upon or

even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party:

a) any person who ought to have been joined as plaintiff or defendant, but not added or (b) any person whose presence before the court may be necessary in order to enable the Court to effectively and completely adjudicate upon and settle the question involved in the suit. In short, the Court is given the discretion to add as a party, any person who is found to be a necessary party or proper party. A necessary party is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a necessary party- is not impleaded, the suit itself is liable to be dismissed. A proper party is a party who, though not a necessary party, is a person whose presence would enable the Court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made.

09. In view of the principles laid down in the above two Judgments, in a suit for specific performance, the person, who obtained attachment over the property and brought the property for sale, for realization of the Decree debt i.e. mesne profits, is neither proper nor necessary party and not entitled to come on record as a second defendant.

10. While exercising the power under Article 227 of the Constitution of India, though the powers of this Court are limited, which are in the nature of superintendence, when the court below committed an error exceeding the limits of the jurisdiction, the court can interfere with such an order. In KASTURI V. IYYAMPERUMAL AND OTHERS^[3], the Apex court held that it is always open to Supreme Court to interfere with an order allowing an application for

addition of parties when it is found that Courts below had gone wrong in concluding that persons sought to be added in suit were necessary or proper parties to be added as defendants in suit instituted by plaintiff.

11. By applying the principle laid down in the above Judgment, this Court, while exercising the power under Article 227 of the Constitution of India, can interfere with the impugned order.

12. On overall consideration of the material available on record, the first respondent is neither necessary nor proper party to the suit for specific performance, since the scope of trial in a suit for specific performance is limited. However, the first respondent-proposed party, who attached the property, is entitled to the amount due to him in a Decree proceeded against the property. The revision petitioner, who purchased the schedule property i.e. plot No.401, is always subject to the attachment, if any subsisting on the date of filing or prior to obtaining agreement of sale dated 22.08.2004.

13. In the result, the revision petition is allowed setting aside the order dated 09.12.2015 in I.A.No.1174 of 2014 in O.S. No.632 of 2009 passed by the XIV Additional Chief Judge (FTC), City Civil Court, Hyderabad. No costs.

14. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 09.08.2016

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[\[1\]](#) (2012) 1 ALD 322

[\[2\]](#) (2012) 2 ALD 89

[\[3\]](#) AIR 2005 SC 2813

