

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.2479 of 2016

ORDER :

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioners – proposed defendant Nos.2 and 3, challenging the order dated 08.07.2015, passed in I.A.No.29 of 2014 in O.S.No.2 of 2014 by the Senior Civil Judge, Nizamabad, dismissing the application filed by them, under Order 1 Rule 10(2), r/w. Section 151 of C.P.C., praying to implead them as defendant Nos.2 and 3.

2. The petitioners herein are petitioners/proposed defendants, respondent No.1 herein is respondent No.1/plaintiff, and respondent No.2 herein is respondent No.2/defendant in I.A.No.29 of 2014 in O.S.No.2 of 2014. For the sake of convenience, the parties are referred to as they were arrayed in I.A.No.29 of 2014, before the Court below.

3. The above application in I.A.No.29 of 2014 in O.S.No.2 of 2014 was filed requesting to implead the proposed defendants in the suit on the basis of an Agreement of Sale dated 18.12.2013, said to have executed by the defendant in the suit concerning the very same property, which was the subject matter of Gift Settlement Deed bearing Document No.5170/2007, dated 24.05.2007, executed by the defendant

in favour of the plaintiff, and further rectified by way of Rectification Deed dated 30.05.2007. Later, it appears that the defendant got the said Gift Settlement Deed dated 24.05.2007, cancelled by executing a registered deed dated 04.12.2009, which has given cause for the plaintiff to lay the above suit seeking the reliefs; to declare the cancellation deed 04.12.2009, as void and to declare the Gift Settlement Rectification Deed dated 30.05.2007, as valid.

4. It appears that the proposed defendants, on the basis of Agreement of Sale dated 18.12.2013, said to have executed by the defendant for a total consideration of Rs.66,50,000/-, concerning the plaint schedule property and, on the premise that they even paid an advance amount of Rs.20,00,000/- on 31.12.2013, and Rs.7,55,000/- on 02.01.2014, to the defendant and derived rights on the plaint schedule property, filed the above application in I.A.No.29 of 2014 seeking their impleadment as proposed defendant Nos.2 and 3.

5. The Court below, by impugned order dated 08.07.2015, negatived their request, on the ground that the proposed defendants are not proper and necessary parties, in whose absence, the matter in controversy or any issue between respondent Nos.1 and 2, who are plaintiff and defendant, respectively, can be completely and effectively adjudicated and the course open for the petitioners, who are proposed defendant Nos.2 and 3, is to initiate proceedings for redressal

of their grievance. Hence, the proposed defendants have filed the present Civil Revision Petition.

6. Heard Sri T.V. Kalyan Sing, learned counsel for the petitioners – proposed defendants, and Sri Venugopal Julakanti, learned counsel for respondent No.1 – plaintiff.

7. Perused the order under challenge and the material available on record.

8. What has been recorded by the Court below cannot be found fault with, for the reason that, the relief sought for by the plaintiff in the suit filed against the defendant was for a declaration to treat the cancellation deed 04.12.2009, executed by the defendant as *void ab initio*; and for a further declaration that the Gift Settlement Deed dated 24.05.2007, and the Rectification Deed dated 30.05.2007, executed in her favour, are valid. Thus, the present petitioners, who are proposed defendants, are absolutely unnecessary to resolve the controversy between the parties to the suit and, therefore, they cannot be construed as neither proper nor necessary parties. Hence, the present revision is liable to be dismissed.

9. However, the appropriate remedy available for the proposed defendants is to approach the Court below seeking appropriate relief by way of initiating independent proceedings by way of filing a suit to enforce the Agreement of Sale dated 18.12.2013, in case the defendant refuses to

perform his obligation under the said Agreement of Sale, by proving the same as true and valid.

10. Subject to the above observation, the Civil Revision Petition is dismissed, at the admission stage. No order as to costs.

11. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE A. SHANKAR NARAYANA

23.09.2016.
Msr



HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.2479 of 2016



23.09.2016
Msr