

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

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CIVIL REVISION PETITION No.527 OF 2016
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ORDER:

The petitioner is a third party to the proceedings in O.S. No.84 of 2008 between the plaintiff and four defendants for bare injunction. The petitioner claims that he purchased the property of the plaintiff pending suit vide registered sale deed dated 20.10.2011 and he wants to be impleaded as co-plaintiff. The application was filed under Rule 10 of Order I of the Code of Civil Procedure, 1908 (for short, 'the Code'), the same was opposed by the contesting defendants 3 and 4 (R.4 and R.5 to the implead petition in I.A. No.3556 of 2012) with the contentions that the defendants are absolute owners of the property, the plaintiff is not entitled to the relief of injunction and pending suit so called purchase in favour of the petitioner to come on record does not create any right much less giving possession over the property and it is hit by Section 52 of the Transfer of Property Act, 1882 and without any right even he allegedly brought into existence, the so called transaction in the pending suit for stepping into the shoes of the plaintiff, even plaintiff cannot claim any rights over the property and sought for dismissal.

02. The lower court referred Rule 10 of Order XXII of the Code, in the course of hearing by the parties including the settled expression of the Apex Court on the scope of Rule 10 of Order XXII of the Code in **Dhurandhar Prasad Singh v. Jayaprakash University and others**^[1], and observed ultimately by referring to the expression that to claim that he is a pending suit vendee, he did not file any scrap of paper and thereby there is nothing to show even the original party is not prosecuting the suit, hence, no ground in the claim to come on record. It is now impugned in the revision.

03. The respondents other than the plaintiff/ R.1 have been even served, failed to attend. The counsel for the plaintiff/R.1 submits that he

has no objection to implead the petitioner as co-plaintiff.

04. Heard and perused the material on record.

05. It is not mere impropriety or illegality in the order alone that is prone to revision invoking Article 227 of the Constitution of India but also to show causing of prejudice therefrom. Undisputedly, to claim that he is a pending suit vendee, when he failed to produce any document in the lower court for recognizing the claim of such right, the lower court dismissed the petition. Thus there is nothing to find fault and interfere but for to say that order no way prejudice right of filing fresh petition by submitting the document under which he claims right as from the expression in **Dhurandher Prasad Singh** supra, the pending suit vendee also entitles to continue the proceedings by stepping into the shoes of the original party, even the original party contested or not and the same is reiterated by the latest expression of the Apex Court in **Sharadamma v.**

Mohammed Pyrejan (D) through L.Rs. and another^[2].

06. Accordingly, and in the result, the revision is disposed of giving liberty to the petitioner as observed supra to file fresh petition with document/s under which he claims right pending suit to continue the suit proceedings by coming on record with correct provision of law under Rule 10 of Order XXII of the Code as laid down in **Sharadhamma** supra. There shall be no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

11.02.2016
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^[1] AIR 2001 SC 2552

^[2] 2016(1) SCC 730