

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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CIVIL REVISION PETITION No.4294 of 2014

ORDER:

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This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful petitioners/3rd parties to the suit is directed against the orders dated 12.07.2011 of the learned III Additional Junior Civil Judge, Rangareddy District passed in IA.no.437 of 2011 in OS.no.3047 of 2007 filed by the 3rd parties under Order I Rule 10 of the Code of Civil Procedure, 1908 requesting to implead them as defendants 4 and 5 in the suit.

2. I have heard the submissions of the learned counsel for the revision petitioners/proposed defendants ('the proposed defendants', for brevity) and the learned counsel for the 1st respondent/plaintiff ('the plaintiff', for brevity). Respondents 2 to 4 are stated to be not necessary parties. I have perused the material record.

3. The case of the proposed defendants in support of their request for their impleadment in the suit of the plaintiff, in brief, is as follows:

The first proposed party/proposed 4th defendant is the owner and possessor of plot no.1 admeasuring 713 square yards in sy.no.40 situate at Chengicherla village. He had purchased the same under a registered sale deed dated 04.10.2008 from its lawful owner and possessor Gangineni Satyanarayana i.e., the 2nd defendant in the suit, who is being represented by his GPA holder, who is no other than the proposed 5th defendant. The proposed 4th defendant is in possession and enjoyment of the above property since the date of the said purchase by him. That plot originally belonged to the 2nd defendant. The 2nd defendant had purchased the said plot from the 3rd defendant under a registered sale deed dated 10.12.1984. The plaintiff brought the suit against the defendants 1 to 3 *inter alia* stating that she had purchased the plot under a registered sale deed from the 1st

defendant and that the 1st defendant in his turn had purchased the same from the 2nd defendant. In fact the 2nd defendant had never sold the property. The sale deed being relied upon by the plaintiff is forged and fabricated and is one brought into existence. The plaintiff had filed an interlocutory application in IA.no.4412 of 2007 for grant of temporary injunction against the defendants 1 to 3. The plaintiff further filed IA.no.158 of 2008 to implead the proposed 5th defendant as 4th respondent in the above said IA.no.4412 of 2007. The trial Court had allowed IA.no.158 of 2008 by its order dated 30.07.2009 and permitted the plaintiff to implead the proposed 5th defendant as 4th respondent in IA.no.4412 of 2007. In fact the plaintiff had filed another suit- OS.no.1568 of 2010 for declaration and injunction in respect of the suit plot against the 2nd defendant and also the proposed defendants 4 and 5 herein on the same cause of action. In that suit, the plaintiff had specifically pleaded that no other suit is pending. The proposed defendants herein are contesting the said suit by filing written statements. In the present suit, the plaintiff had filed her affidavit in lieu of examination-in-chief. On going through the contents of the same, it is revealed that the plaintiff had suppressed the fact of filing of the other suit OS.no.1568 of 2010 against the proposed defendants herein and others. In the circumstances, the proposed defendants are necessary parties to the instant suit and their presence is imperative/indispensable for proper and final adjudication of the instant suit. As the proposed defendants are necessary parties, the present petition is filed for their impleadment as defendants 4 and 5 in the suit.

4. The case of the plaintiff, in brief, is this: 'She is a *bona fide* purchaser of the suit schedule plot. Since the date of purchase, she is in possession and enjoyment of the same. The 2nd defendant had remained *ex parte*. The 2nd defendant has no right, title and interest in the property. Therefore, the 2nd defendant is not competent to execute any sale deed in favour of the proposed 4th defendant, that too, during the pendency of the suit. On the date of the execution of the sale deed dated 04.10.2008 the 2nd defendant has no manner of right, title and interest in the property. It is true that the plaintiff has

filed another suit for declaration and cancellation of registered sale deeds bearing nos.1229/07 and 5261/2008 dated 04.10.2008 against the 2nd defendant and proposed defendants 4 and 5. The cause of action for the said suit is different. The allegation that OS.no.1568 of 2010 is filed on the same cause of action is not correct. If the proposed defendants have got any right and have any grievance, they ought to have initiated an independent civil proceeding for cancellation of the sale deed of the plaintiff herein and the sale deed of her vendors. The allegation that the sale deed of the plaintiff is forged and fabricated and that her vendor has no right to alienate the property are all incorrect. On the other hand, the sale deed of the proposed 4th defendant is a collusive and fabricated sale deed and the said sale deed of the proposed 4th defendant is null and void. By virtue of the fraudulent transfer, no rights had accrued to the proposed defendants 4 and 5. Hence the petition may be dismissed.'

5. At the time of enquiry before the trial Court, no oral and documentary evidence was adduced. However by a brief order, the trial Court had dismissed the petition of the proposed defendants *inter alia* observing that the suit is filed for perpetual injunction and that in a suit for perpetual injunction, the plaintiff has to establish his lawful possession and enjoyment over the suit schedule property as on the date of the filing of the suit and that the judgment that would be granted in a suit for perpetual injunction would be judgment in personum and that, therefore, the proposed defendants 4 and 5 need not be impleaded as party defendants to the suit.

5.1 Having been aggrieved of the said orders, the proposed defendants had preferred this Revision.

6. The learned counsel for the proposed defendants while reiterating their pleaded case would contend as follows: 'The proposed defendants are having right, title and interest in the subject property and since they are having right, title and interest in the suit schedule plot, which is a valuable immovable property, the suit for perpetual injunction cannot be disposed of in their absence. Their presence is imperative for proper and effective

adjudication of the suit. Further, the plaintiff had admittedly filed another suit for declaration and injunction against the proposed defendants 4 and 5 and also the 2nd defendant herein. The material record on a perusal would show that the proposed 5th defendant herein was already impleaded as a party respondent in an interlocutory application in IA.no.4412 of 2007 as per orders dated 30.07.2009 of the Court below in IA.no.158 of 2008. Thus, the proposed 5th defendant was already permitted to be impleaded as 4th respondent in the above said IA filed for temporary injunction; but, by dismissing the instant petition, the trial court had erroneously not permitted the proposed 5th defendant to be impleaded as a defendant to the suit. Since the proposed defendants are already parties to the comprehensive suit- OS.no.1568 of 2010 filed by the plaintiff on the file of the Court of the learned II Additional District Judge, Ranga Reddy District at LB Nagar and the present suit is pending on the file of the Court of the learned III Additional Junior Civil Judge, Ranga Reddy District, the Court below ought to have permitted the proposed defendants to get themselves impleaded as party defendants 4 and 5 in the suit. Though the suit itself was decreed *ex parte* after the dismissal of the instant application of the proposed defendants for their impleadment, the revision is still maintainable as the certified copy was not granted till the decree was passed in the suit. Further, the first appeal preferred by the 3rd parties/proposed defendants was allowed by the learned V Additional District Judge, (Judge, Fast Track Court) Ranga Reddy District by a judgment dated 21.03.2014 and the suit is remitted to the trial Court for disposal in accordance with law only after giving an opportunity to the appellants therein i.e., the proposed defendants to challenge the orders in the subject IA.no.437 of 2011. Hence, the revision petition may be allowed and the trial court be directed to direct the plaintiff to implead the proposed defendants as defendants 4 and 5 to the suit.

7. On the contrary, the learned counsel for the plaintiff while supporting the orders of the Court below would contend that the suit is filed for perpetual injunction specifically alleging certain overt acts against the defendants 1 to 3 and that, therefore, the proposed defendants, who are subsequent

purchasers and whose document is hit by the principle enshrined in the doctrine of *lis pendens* are not necessary and proper parties and that since the proposed defendants are added as parties to the comprehensive suit filed by the plaintiff, their presence for effective adjudication of the present suit for perpetual injunction is not necessary and that in the facts and circumstances the order impugned does not call for interference.

8. I have bestowed my attention to the facts and the submissions. A perusal of the plaint in the present suit would show that the plaintiff has filed the suit against one K. Sudhakar, Gangineni Satyanarayana and Raghupati Reddy for perpetual injunction in respect of open plot no.1 in Sy.no.40 admeasuring 713 Square yards situate at Chengicherla village more fully described in the schedule annexed to the plaint. The material record on a perusal would show that the proposed 5th defendant herein was already impleaded as a party respondent in an interlocutory application in IA.no.4412 of 2007 as per orders dated 30.07.2009 of the Court below in IA.no.158 of 2008. Thus, the proposed 5th defendant was already permitted to be impleaded as 4th respondent in the above said IA filed for temporary injunction; but, by dismissing the instant petition, the trial court had erroneously not permitted the proposed 5th defendant to be impleaded as a defendant to the suit. Thus, even according to the plaintiff the presence of the proposed 5th defendant is necessary in the instant suit for perpetual injunction as the plaintiff had already impleaded the proposed 5th defendant as 4th respondent in the interlocutory application filed for temporary injunction by seeking necessary permission by filing IA.no.158 of 2008. Why the trial Court permitted the proposed 5th defendant to be added in an interlocutory application for temporary injunction as sought for by the plaintiff, when the said party is not a party-defendant to the suit could not be explained by the plaintiff. When the plaintiff wanted to seek a temporary injunction against the proposed 5th defendant, the plaintiff ought to have sought his impleadment as a defendant in the suit in the first instance. During the pendency of this suit, the plaintiff had also filed OS.no.1568 of 2010 on the file of the Court of the

learned II Additional District Judge, Ranga Reddy District against G.Satyanarayana/2nd defendant in the instant suit and also the proposed defendants 4 and 5. That suit is filed for declaration of ownership of plaintiff and consequential perpetual injunction in respect of the very same property. Though two suits are filed by the plaintiff in respect of the same property and though the proposed defendants are not parties to the instant suit, they are impleaded as party-defendants to the later comprehensive suit. However, the two suits are admittedly pending on the files of different Courts of different pecuniary jurisdictions and cadres; and, none of the parties sought for transfer of one suit to the Court where the other suit is pending for consolidation and joint trial or simultaneous trial of both the suits. The plaintiff and the proposed parties are making claims and rival claims in respect of the same subject property under respective documents and one party is denying the truth and validity of the document/s of the other party and *vice versa*.

9. Coming to the contention that the proposed defendants are purchasers *pendente lite* and that the sale transaction under the sale deed obtained by them after the institution of the suit of the plaintiff is hit by the principle enshrined in the doctrine of *lis pendens*, it is necessary to advert to the legal position obtaining.

9.1 In **A. Nawab John and Ors. v. V.N. Subramaniam** ^[1] the Supreme Court considered elaborately the jurisprudential background of the doctrine of *lis pendens* and also the statutory interpretation of the said doctrine. In the light of principles of law on the doctrine of *lis pendens* settled in **Nawab John** case (1st supra), this Court in **Lebaka Vijaya Bhaskar v. Ambvaram Narayanamma and others** ^[2] had examined the provisions of Order I Rule 10 of the Code and had then made a copious reference to the ratios in a number of precedents and had eventually held in that case as follows:

In view of the preponderance of the legal position laid down by the Supreme Court, as above, the petitioner's case for impleadment deserves to be considered and order impugned rejecting the said application is liable to be set

aside, as it is opposed to the principle, as above and is based on factually incorrect premise that the petitioner's vendor was a party to the suit.

In view of the preponderance of the legal position, it follows that a request of a purchaser *pendente lite* for impleadment deserves to be considered.

9.2 It is apt to now refer to a later/recent decision in **Thomson Press (India) Ltd., v. Nanak Builders & Investors P. Ltd.,**^[3]. In this cited case, the question that fell for consideration is this:

“Whether the Appellant who is the transferee *pendente lite* having notice and knowledge about the pendency of the suit for specific performance and order of injunction can be impleaded as party under Order 1 Rule 10 on the basis of sale deeds executed in their favour by the Defendants Sawhneys’.

It is trite to mention that the facts of the cited case disclose that after the institution of the suit, the counsel who had appeared for the defendants gave an undertaking not to transfer and alienate the suit property and that notwithstanding the order passed by the Court recording the undertaking given on behalf of the defendants and having full notice and knowledge of all these facts the sister concern of the appellant entered into series of transactions and finally the appellant M/s.Thomson Press got a sale deed executed in their favour by the defendants in respect of the suit property. Therefore, the alienation in that case was made in violation of an undertaking given to the Court and recorded by the Court.

Hon’ble Sri Justice M. Yusuf Eqbal, in his Lordship’s judgment rendered in the cited case finally held as under:

Having regard to the law discussed hereinabove and in the facts and circumstances of the case and also for the ends of justice the Appellant is to be added as party-Defendant in the suit. The appeal is, accordingly, allowed and the impugned orders passed by the High Court are set aside.

Before parting with the order, it is clarified that the Appellant after implement as party-Defendant shall be permitted to take all such defences which are available to the vendor Sawhneys’ as the Appellant derived title, if any, from the vendor on the basis of purchase of the suit

property subsequent to the agreement with the Plaintiff and during the pendency of the suit.

Hon'ble Sri Justice T.S. Thakur, in his Lordship's judgment rendered in the cited case finally held as under:

There is, therefore, little room for any doubt that the transfer of the suit property *pendente lite* is not void ab initio and that the purchaser of any such property takes the bargain subject to the rights of the Plaintiff in the pending suit. Although the above decisions do not deal with a fact situation where the sale deed is executed in breach of an injunction issued by a competent Court, we do not see any reason why the breach of any such injunction should render the transfer whether by way of an absolute sale or otherwise ineffective. The party committing the breach may doubtless incur the liability to be punished for the breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent Court may issue in the suit against the vendor.

We are not on virgin ground in so far as that question is concerned. Decisions of this Court have dealt with similar situations and held that a transferee *pendente lite* can be added as a party to the suit lest the transferee suffered prejudice on account of the transferor losing interest in the litigation post transfer.

His Lordship having then referred to the ratio in the decision in **Khemchand Shanker Choudhary v. Vishnu Hari Patil** (1983) 1 SCC 18, further held as under:

To the same effect is the decision of this Court in *Amit Kumar Shaw v. Farida Khatoon* (2005) 11 SCC 403 where this Court held that a transferor *pendente lite* may not even defend the title properly as he has no interest in the same or collude with the Plaintiff in which case the interest of the purchaser *pendente lite* will be ignored. To avoid such situations the transferee *pendente lite* can be added as a party Defendant to the case provided his interest is substantial and not just peripheral.

Finally, his Lordship referred to the decision in **Rikhu Dev, Chela Bawa Harjug Dass v. Som Dass (deceased) through his Chela Shiama Dass** [(1976) 1 SCC 103] and summed up the findings as follows:

(1) The Appellant is not a bona fide purchaser and is, therefore, not protected against specific performance of the contract between the Plaintiff's and the owner Defendants in the suit.

(2) The transfer in favour of the Appellant *pendente lite* is effective in transferring title to the Appellant but such title shall remain subservient to the rights of the Plaintiff in the suit and subject to any direction which the Court may eventually pass therein.

(3) Since the Appellant has purchased the entire estate that forms the subject matter of the suit, the Appellant is entitled to be added as a party Defendant to the suit.

(4) The Appellant shall as a result of his addition raise and pursue only such defenses as were available and taken by the original Defendants

and none other.

In this decision, the Supreme Court has referred to and considered the earlier decisions in **Surjit Singh v. Harbans Singh**^[4] and **Vidhur Impex and Traders Pvt. Ltd. And Ors. v. Tosh Apartments Pvt. Ltd. And Ors.**^[5]. In view of the precedential guidance and the ratio in the latest decision in **Thomson Press** (3rd supra), this Court is of the considered view that the proposed defendants' request for their impleadment has to be considered in the facts and circumstances of the case and also to meet the ends of justice.

10. Having regard to the aforesaid reasons and the legal position obtaining, this Court finds that the order impugned calls for interference and that the revision petition which is having acceptable merit deserves to be allowed.

11. In the result the Civil Revision Petition is allowed and the order impugned is set aside and as a sequel IA.no.437 of 2011 in OS.no.3047 of 2007 on the file of the Court of the learned III Additional Junior Civil Judge, Rangareddy District is allowed. Accordingly, the trial Court is directed to permit the impleadment of the proposed parties as the defendants 4 and 5 in the suit.

There shall be no order as to costs.

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

M.SEETHARAMA MURTI, J

01.06.2016

Vjl

^[1] (2012) 7 SCC 738

^[2] 2013 (6) ALD 184

^[3] 2013 (3) ALD 111(SC)

^[4] (1995) 6 SCC 50

^[5] AIR2012SC2925