

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Civil Revision Petition No.5092 of 2016

ORDER:

This Civil Revision Petition is directed by the respondent/5th plaintiff against the order in I.A.No.120 of 2016 in O.S.No.136 of 2015 dated 29.08.2016 on the file of IV Additional District Judge, Kadapa whereby the trial Court allowed the petition filed by the 1st respondent/proposed defendant No.5.

2 a) The petitioner, the respondents 2 to 14 herein have filed the suit against respondents 15 to 18/defendants claiming the reliefs of declaration of their right in respect of suit schedule property and for further declaration that the registered sale deed dated 26.05.2012 and registered G.P.A dated 17.09.2012 are null and void and not binding on the plaintiffs and for a consequential permanent injunction restraining the defendants and their men from alienating the suit schedule property. Plaintiffs case is that the suit schedule land originally belonged to one Koppala Veeramma and her brother—Lingarreddy Lakshmanna and after the death of Lakshmanna who was a bachelor, Veeramma became the full owner and after the death of said Veeramma and her husband—Peddabayanna issueless, the four brothers of Peddabayanna succeeded the suit property and the plaintiffs and defendant No.1 are the descendants of those four brothers and hence they succeeded the suit schedule property. Their further case is that when plaintiffs and 1st defendant were in joint possession and enjoyment of the suit schedule

property, the 1st defendant created some sham and nominal sale deed dated 26.05.2012 in favour of defendants 2 and 3 in respect of the suit schedule property and the defendants 2 and 3 in their turn executed a GPA dated 17.09.2012 in favour of 4th defendant to manage the suit property and other properties. These acts were done behind the back of plaintiffs. Hence the suit by the plaintiffs.

b) While-so, the 1st respondent herein filed I.A.No.120 of 2016 to implead her as 5th defendant in the suit on the plea that the suit schedule property was purchased by one Muli Gangireddy under an unregistered permanent sale deed dated 19.05.1931 from its owners Koppala Veeramma and Lingareddy Lakshmanna and he was in possession and enjoyment of the same and after his death, the suit schedule property was succeeded by one Muli Gangireddy, who enjoyed the said property till 26.03.1980 and thereafter he executed an unregistered gift deed dated 26.03.1980 in favour of the 1st respondent/proposed defendant No.5, who is his daughter and ever since she has been in possession and enjoyment of the same and except her nobody has any right or title over the suit property and before filing the petition, she came to know that the parties in the suit were trying to knock away the property.

c) The above petition was resisted by the plaintiffs.

d) The trial Court allowed the petition on the observation that as the petitioner therein was contending that she was the owner of the suit

schedule property and in possession and enjoyment of the same, she was a necessary party to the suit.

Hence the instant CRP.

3) Heard arguments of Sri V.R.Reddy Kovvuri, learned counsel for petitioner and Sri G.Ramachandra Reddy, learned counsel for 1st respondent and with their consent this CRP is disposed of at the admission stage.

4) Fulminating the order impugned, learned counsel for the petitioner would contend that the trial Court erred in holding that the 1st respondent is a necessary party to the proceedings. He contended that the 1st respondent was neither a necessary nor a proper party to the suit. The plaintiffs therein laid the suit claiming that the plaintiffs and D.1 are the joint owners of the suit property and 1st defendant was creating some sham and nominal sale deeds in favour of other defendants. While-so, the 1st respondent sought to implead herself as defendant No.5 in the suit claiming independent title and therefore, the cause of action of the plaintiffs and the cause of action of the proposed party are quite different. Even in the absence of the proposed party, the suit can be disposed of effectively and therefore, she cannot claim herself as either a necessary or proper party. She has to file an independent suit to vindicate her rights if any and in that suit, the admissibility and validity of the unregistered documents setup by her would come up for discussion and so also the aspect of limitation of her claim would also come up for scrutiny. Therefore, such an intermeddler cannot come on record as a

defendant whose cause of action is quite different. He placed reliance on the decision reported in *Taddi Chinnayya and others vs. Tekumalla Purushottam Rao and others*¹.

5) Per contra, learned counsel for 1st respondent tried to justify the impugned order on the argument that both plaintiffs and the proposed party are tracing their title through common owners and therefore, the trial Court rightly found the proposed party as a necessary party and allowed her petition and the said order is neither illegal nor improper warranting any interference.

6) In the light of above rival arguments, the point for determination is:

“Whether there are merits in the revision to allow?”

7) **POINT:** From the facts of the case as enunciated supra, it is evident that 1st respondent/ proposed defendant No.5 is setting up a title in herself independent to that of the plaintiffs and defendant No.1. Therefore, admittedly the cause of action for her is different from that of the plaintiffs in the suit. It is a trite law that plaintiff being the suitor, he will be the *dominus litis* and he can choose the persons against whom he can claim the relief and the Court will not generally impose upon him against whom he has to claim the relief. Ofcourse the exception is laid under Order 1 Rule 10 CPC. The said exception has to be pressed into service only when the proposed party is found to be either a necessary or

¹ 2015(4) ALD 501

a proper party to the suit. In the decision reported in *Thomson Press (India) Limited vs. Nanak Builders and Investors Private Limited & others*² which was referred in *Taddi Chinnayya*'s case (1 supra), the Apex Court observed thus:

“Para 32: *Considering the aforesaid provisions, this Court in Ramesh Hirachand Kundanmal v. Municipal Corpn. of Greater Bombay [(1992) 2 SCC 524] held as under: (SCC p. 531, Para 14)*

“14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer i.e. he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in Amon v. Raphael

² (2013) 5 SCC 397

Tuck & Sons Ltd. [(1956) 1 QB 357 : (1956) 2 WLR 372 : (1956) 1 All ER 273] , wherein after quoting the observations of Wynn-Parry, J. in Dollfus Mieg et Compagnie SA v. Bank of England [(1950) 2 All ER 605] , that the true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject-matter of the action if those rights could be established, Devlin, J. has stated: (Amon case [(1956) 1 QB 357 : (1956) 2 WLR 372 : (1956) 1 All ER 273] , QB p. 371)”

a) Thus from the above decision it is clear that the true test is that whether the decision in the suit will effect proposed party legally i.e, by curtailing his legal rights. A party cannot be joined as defendant when his only object is to prosecute his own cause of action. Applying the above principle to the instant case, the instant suit in the absence of the proposed defendant No.5 can be effectively decided and the decision in the suit will not bind her ultimately and therefore, there is no fear that it will curtail her legal rights if any. Admittedly the proposed defendant is prosecuting her own cause of action. Thus in any event, she cannot be said to be either a necessary or a proper party. In such an event, the only course open to her is to institute an independent suit to vindicate her rights, ofcourse by following the relevant laws applicable. The trial Court, in my considered view, was not right in holding that the proposed party is a necessary party since herself and the plaintiffs are claiming right through the common owner. It must be reiterated that by itself will not make her as a necessary or a proper party. The impugned order therefore, needs to be set aside.

8) In the result, this Civil Revision Petition is allowed and the impugned order dated 29.08.2016 passed in I.A.No.120 of 2016 in O.S.No.136 of 2015 by the IV Additional District Judge, Kadapa is set aside. No costs.

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

U. DURGA PRASAD RAO, J

Dt. 22.12.2016

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