

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.4770 of 2016

ORDER:

Notice to respondent Nos.1 and 2 served failed to attend, they are no other than petitioners/plaintiffs in suit filed by them against the 3rd respondent/defendant. Pending suit, there was alienation of property in favour of the proposed petitioner and 3 others vide sale deed dated 18.08.2015 and pursuant to which the petitioner who wants to come on record as a 3rd plaintiff went unsuccessful in I.A.No.330 of 2016 before the lower Court under Order I Rule 10 CPC. The lower Court dismissed the petition filed by the petitioner/proposed plaintiff against the respondent Nos.1 and 2 saying there is no mention in said sale deed about existence of lease to consider any statutory attornment. Though the expression in **Suraj Lamp & Industries Private Limited Vs. State of Harayana & Another**¹ referred it is mainly in relation to the GPA for consideration governed by Section 202 of the Indian Contract Act and not of much relevancy here to discuss further.

In fact Section 146 CPC reads as follows:

146. Proceedings by or against representatives.- Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or by application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him.

From very reading of the provision, it makes clear that the petitioner claiming through the plaintiffs can be deemed as also taken the proceedings from lis pendens transfer against the 3rd

¹ 2012 (1) ALD 92 (SC)

respondent/defendant to the suit. In fact Order 22 Rule 10 CPC speaks that in every case of assignment, creation or devolution of interest during the pendency of suit, may by leave of the Court, be continued by or against the person to or upon whom such interest has given or devolved.

Once such is the case, the petitioner along with other vendees are entitled to participate in the proceedings maintained by plaintiff Nos.1 and 2 against the sole defendant to continue as co-plaintiffs, for the two plaintiffs since transferred the subject lis property in favour of the petitioners and other vendees by virtue of the sale in the year 2015 and thereby may not evince that interest to vigorously prosecute the suit claim having alienated. Thus their impleadment can be considered under the above provisions of Section 146 & Order 22 Rule 10 CPC apart from Order I Rule 10 clause (2) enables the Court at any stage of the proceedings to implead any party even once they are either necessary or proper parties to the effective adjudication of the lis. The dismissal of the application by the lower Court is thereby unsustainable. At this stage the petitioner stated that the proposed other vendors also want to be joined.

Thus, the revision is allowed and while setting aside the impugned dismissal order in I.A.No.330 of 2016 dated 09.06.2016, the matter is remanded to the lower Court to permit any such application for the other vendees of the sale deed to come on record in I.A.No.330 of 2016 as co-petitioners to seek for impleadment as co-plaintiffs and then to give fresh disposal of the application on own merits.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 17.11.2016
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