

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION No.600 of 2011

ORDER:

The petitioner filed the suit for specific performance of the agreement of sale dt.19-11-2004 executed in his favour by respondent Nos.1 to 3.

2. Written statement was filed by respondent Nos.1 to 3 stating that they have sold item Nos.1 and 2 of the plaint schedule property to

4th respondent by executing a registered General Power of Attorney-cum-Agreement of sale dt.25-07-2005.

Petitioner therefore impleaded the 4th respondent as a party to the suit by filing I.A.No.96 of 2008, which was allowed on 05-02-2008.

3. After impleadment, 4th respondent filed a written statement stating that item Nos.1 and 2 of the plaint schedule property belong to him and he is in possession thereof.

4. Petitioner however denied the allegation that 4th respondent is in possession but in view of the stand taken by 4th respondent, he filed I.A.No.1078 of 2008 seeking

amendment of the plaint to also seek the relief of declaration that the General Power of Attorney-cum-sale agreement relied on by 4th respondent dt.25-07-2005 is null and void and to consequently cancel the same.

5. Counter affidavit was filed by 4th respondent opposing this application alleging that the proposed amendment would set up a new case, which creates a new cause of action to the suit.

6. This objection of 4th respondent was accepted by the Court below and I.A.No.1078 of 2008 was dismissed on the ground that allowing the amendment would change the entire cause of action in the suit.

7. Challenging the same, this Revision is filed.

8. Heard Sri P.Madhusudhana Kumar, learned counsel for petitioner and Sri A.S.C. Bose, learned counsel for 4th respondent.

9. Since the Civil Revision Petition is directed against the order dt.02-12-2010 in I.A.No.1078 of 2008 in O.S.No.39 of 2007 of the Senior Civil Judge at Gajuwaka refusing to allow prayer for amendment of the plaint sought by petitioner as a consequence to the plea raised by 4th respondent, who was subsequently impleaded in

the suit on 05-02-2008, I am of the opinion that respondent Nos.1 to 3 are not necessary parties to this Revision.

10. There is no dispute that the suit filed by petitioner is for specific performance of the possessory agreement of sale dt.19-11-2004 executed in his favour by respondent Nos.1 to 3. The agreement set up by 4th respondent as well as respondent Nos.1 to 3 is dated 25-07-2005 and the very existence of this agreement came to the knowledge of petitioner after defendant Nos.1 to 3 filed the written statement. Therefore by way of abundant caution, this application has been filed to seek an additional relief of declaration that this General Power of Attorney-cum-Sale agreement dt.25-07-2005 is null and void and to cancel the same.

11. It may be that this relief is superfluous in view of the decisions of the Supreme Court in **Babu Lal Vs. M/s.Hazari Lal Kishori Lal and others**^[1] and **Lala Durga Prasad Vs. Lala Deep Chand**^[2] that if the petitioner succeeds in getting the relief of specific performance, the Court can always direct the subsequent purchaser to join as a party in the sale deed which the respondent Nos.1 to 3 would be made to execute in

favour of petitioners.

12. Be that as it may, if petitioner is entitled to relief of specific performance, he would be entitled to consequent relief also and if the Court below finds that he is not entitled to the principal relief of specific performance, he would not be granted the relief of cancellation of General Power of Attorney-cum-Agreement of sale dt.25-07-2005 also. So I do not see any prejudice to 4th respondent by allowing the application for amendment.

13. Therefore, I am of the opinion that the impugned order cannot be sustained. It is accordingly set aside and I.A.No.1078 of 2008 is allowed.

14. The Civil Revision Petition is accordingly allowed and the Court below is directed to dispose of the suit preferably within a period of six (06) months from the date of receipt of a copy of this order. No costs.

15. As a sequel, miscellaneous petitions pending if any, in this Civil Revision Petition shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 03-02-2016

Vsv/*

[\[1\]](#) AIR 1982 SC 818

[\[2\]](#) AIR 1954 SC 75