

HON'BLE SRI JUSTICE S.V.BHATT

C.R.P.No.736 OF 2016

ORDER:

Heard learned counsel appearing for the parties.

The C.R.P. is directed against the order dated 04.01.2016 in I.A.No.412 of 2012 in I.A.No.595 of 2010 in O.S.No.115 of 2001 in the Court of I Additional Senior Civil Judge, Nellore.

Through I.A.No.595 of 2010, the parties to the lis are working out the preliminary decree passed in O.S.No.115 of 2001. The revision petitioner filed I.A.No.412 of 2012 under Order I Rule 10 of Code of Civil Procedure to permit revision petitioner to come on record as 6th respondent in I.A.No.595 of 2010. The learned trial Judge dismissed the application. The reasons recorded by the learned trial Judge primarily centres round the effect of Section 52 of the Transfer of Property Act. Prima facie the principle of law considered and explained by the trial Court, no fault can be found. But consideration of a few of facts persuades this Court to take an independent view on the necessity of impleading the petitioner as 6th respondent in I.A.No.595 of 2010.

On 09.02.2001, Iragala Subbamma/respondent No.2 herein executed G.P.A. in favour of Sarvepalli Srinivasa Rao for Item No.2 of the suit schedule property. On 16.06.2001, the G.P.A. sold an extent of 16 ankanams 48 square feet in favour of Pasupuleti Venkateshwarlu/respondent No.5 herein. On 16.06.2001, the G.P.A. again alienated 16 ankanams 48 square feet in favour of Y.Neelakanteswara Rao/6th respondent. On 25.04.2004, Y.Neelakanteswara Rao alienated the property covered by sale deed dated 16.06.2001 in favour of S.Prasada Rao. Likewise, on 24.01.2006, Prasada Rao sold the property covered by sale deed

dated 25.04.2004 in favour of P.Satyanarayana. Reverting back to respondent No.5, on 28.08.2006, respondent No.5 alienated 16 ankanams 48 square feet in favour of J.L.Narayana/respondent No.4, Thus P.Satyanarayana and J.L.Narayana claim to have become owners of 16 ankanams 48 square feet each. On 21.08.2008, respondent No.4 and P.Satyanarayana executed G.P.A.-cum-Agreement of sale in favour of Narapureddy Srinivasulu Reddy and Maddali Sunil Kumar Reddy.

This Court in normal circumstances would not have referred to these details, but for the fact that the prayer in I.A.No.412 of 2012 is required to be considered in the light of findings recorded by the trial Court on issue No.2 in O.S.No.115 of 2001. The findings read as follows:

“ Plaintiff has proved his case. Plaintiff and 2nd defendant are entitled to 4/9th share and first defendant is entitled to 1/9th share in the plaint schedule properties. The sale deeds executed in favour of defendants 4 to 6 by the first defendant are not binding on the plaintiff and 2nd defendants. Defendants 1,2,4 to 6 to put the plaintiff in possession of his 4/9th share within two months, if not, plaintiff is at liberty to get the same done through process of Court. Preliminary decree is passed with costs accordingly against defendants 1,2,4 to 6. Since 3rd defendant is pro-forma party, suit is dismissed against him without costs. Plaintiff and defendants 1 and 2 to pay existing loan amount secured on item 1 of plaint schedule house as per their respective shares.”

Learned counsel for the petitioner contends that assuming without admitting that the principle of *lis pendens* is attracted to the sale deeds in favour of either revision petitioner or her predecessors-in-interest, still having regard to the nature of relief that has to be worked out in the final decree allotment of share to the plaintiff, defendants 1

and 2, the presence of revision petitioner is proper and necessary and refusal on the part of the trial Court amounts to illegal, irregular exercise of jurisdiction.

Mr. N. Bharath Babu, representing 1st respondent, has made alternative submissions. Firstly, he contends that the presence of revision petitioner is not at all required, for the share of 1st respondent will be carved out and he will be put in possession of the property and for that purpose the revision petitioner's vendors' vendor is already arrayed as one of the respondents and the present application is filed only to drag on the final decree proceedings pending in I.A.No.595 of 2010. He alternatively submits that for any reason if the Court comes to the conclusion that for effective adjudication and settlement of disputes between the parties or persons claiming through them vis-à-vis the suit schedule property the prayer is accepted, the trial Court may be directed to complete the enquiry in I.A.No.595 of 2010 as expeditiously as possible preferably within a period of four weeks from the date of receipt of a copy of this order and pass final decree.

I have perused the material available on record and noted the submissions of learned counsel appearing for the parties.

The revision petitioner prays for impleading her as respondent No.6 in pending final decree proceedings in I.A.No.595 of 2010. The preliminary decree is one for partition, separate possession and putting the 1st respondent in possession of 4/9th share of the plaint schedule property. From the chronology of transactions referred to above, it is clear the 2nd respondent herein virtually does not hold anything in suit schedule property, for she has already sold the same in favour of third parties. With a view to avoid complications at the stage of execution and pass a final decree on the lines of preliminary

decree, I am of the view that prayer for impleading the revision petitioner as 6th respondent should have been considered and accepted. Accordingly, the order impugned in the revision is set aside and the C.R.P. is allowed. The revision petitioner is impleaded as 6th respondent in I.A.No.595 of 2010.

At the time of hearing, it is brought to the notice of this Court that while disposing of C.R.P.No.2166 of 2015, this Court directed disposal of I.A.No.595 of 2010 within three months from the date of filing of proof of deposit of Rs.5,000/-. It is admitted by the learned counsel appearing for the parties that the condition imposed by this Court in C.R.P.No.2166 of 2015 was complied with. The trial Court ought to have obtained extension of time, when there is difficulty in adhering to time schedule. Be that as it may, the trial Court is directed to dispose of I.A.No.595 of 2010 within a period of two months from the date of receipt of a copy of this order.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT,J

Date:26.02.2016

Note: C.C. in one week.

B/o.

Stp