

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.5656 of 2015

ORDER:

This Civil Revision Petition is filed by the unsuccessful petitioner/ third party under Article 227 of the Constitution of India assailing the order dated 14.12.2015 of the learned Senior Civil Judge, Adoni, passed in I.A.No.1308 of 2015 in I.A.No.206 of 2006 in O.S.No.38 of 1965 filed under Order I Rule 10 of the Code of Civil Procedure, 1908, ('the Code') requesting to implead him as party 73rd respondent in I.A.No.206 of 2006 claiming *inter alia* that during the pendency of the final decree petition, he purchased 1/ 13th share of the deceased 5th defendant in the suit from his legal heirs by virtue of a registered deed dated 09.06.2011 and that he similarly purchased the share of the deceased 6th defendant from the legal heirs of the said defendant under a registered sale deed dated 24.09.2011 and that in view of the said purchases from the legal heirs of the said defendants, he acquired a 2/ 13th share in the property covered by the preliminary decree schedule and that therefore, he is a necessary and proper party to the final decree proceedings and that he has a right of audience in the matter having acquired right, title and interest in the property.

2. The trial Court dismissed the said petition holding that the petitioner is a purchaser *pendente lite* and that the contention of the contesting respondents is that he is not a *bona fide* purchaser and that he purchased the property having knowledge of the preliminary decree in the partition suit and that therefore, he cannot be permitted to be impleaded as a party respondent to the final decree proceedings.

3. Aggrieved thereof, the petitioner/ 3rd party filed this revision.

4. I have heard the submissions of *Sri K.Sta Ram*, learned counsel appearing for the petitioner/ 3rd party and *Sri B. Vijaya Bhaskar*, learned counsel

for the respondents 15 to 21 and *Sri K.Viswanatha Reddy*, learned counsel appearing for respondent no.40. I have perused the pleadings and other part of the material record.

5. The learned counsel for the petitioner while reiterating his case would submit that the petitioner having purchased the shares of the deceased 5th and 6th defendants and having acquired right, title and interest in the property is entitled to be impleaded not only to protect his rights in the properties to the extent of the shares purchased by him but also to seek equities, as equities have to be worked out at the time of passing of the final decree. He would also submit that the impleadment of the proposed party, who is a purchaser, *pendente lite*, of the shares of the defendant 5 and 6 in the property covered by the schedule of the preliminary decree, is necessary not only for effective adjudication and working out equities but also to obviate the necessity of first allotting the shares to the defendants 5 and 6 and then again driving him to institute a separate proceeding only to claim the shares that may be allotted to the defendants 5 and 6.

6. Learned counsel appearing for the contesting respondents while reiterating their cases would submit that the petitioner is not a *bona fide* purchaser and that the petitioner, who had purchased the property with full knowledge of the preliminary decree, is not entitled to come on record and he is not a necessary party and that the principle enshrined in the doctrine of *pendente lite* clearly bars him from seeking his impleadment in the final decree proceedings. The said counsel would further submit that the suit is pending since 1965 and that the petitioner is filing petitions after petitions and that as per the interim orders of this Court, the final decree proceedings have almost reached the stage of culmination; and that at that stage, the present application is filed to drag on the proceedings and that under the guise of

pendency of this revision petition and a connected revision petition, the petitioner is dragging on the proceedings.

7. It is apt to call in aid the following decisions: (i) Lebaka Vijaya Bhaskar Reddy v. Ambavaram Narayanamma¹; and, (ii) K.Srinivasulu v. Jaldu Subramanyam Chettu².

8. I have gone through the pleadings and I have given detailed and thoughtful consideration to the facts and submissions.

9. The petitioner is a third party. Admittedly, his father is the 1st defendant in the suit for partition. The suit is at the stage of final decree proceedings. The defendants 5 and 6 are allotted shares under the preliminary decree. The petitioner claims that under registered documents, he purchased the respective shares of the defendants 5 and 6 from their respective legal heirs and therefore, he has acquired a 2/13th share in the entire preliminary decree schedule property and hence, he is entitled to be impleaded not only to protect his interests but also for working out equities at the time of passing of the final decree. The main objection of the contesting respondents is that since he is a purchaser having knowledge of the preliminary decree and that he purchased the shares of the defendants 5 and 6 during the pendency of the litigation, he is not entitled to be impleaded.

10. This revision need not detain this Court for long in view of the admitted facts and settled legal position. In the well considered view of this Court, both the objections are untenable in view of the decision of this Court in Lebaka Vijaya Bhaskar Reddy (1 supra) wherein the entire legal position was succinctly discussed after referring to a catena of decisions including the latest decision of the Supreme Court. In the decision relied upon by the learned counsel for the petitioner, this Court while referring to the decision of the

¹ 2013 (6) ALT 516

² 2014(1) ALT 383 (S.B)

Supreme Court in *Dhanlakshmi v. P.Mohan*³, held that in this cited decision a *pendente lite* purchaser sought impleadment and the said application having been found sustainable, the Supreme Court not only directed his impleadment but also set aside the order of the lower Court as the same was passed in the absence of the proposed party. Further, the learned Judge of this Court in aforesaid decision (1 supra) referred to the decision in *Thomson Press (India) Ltd. v. Nanak Builders and Investors (P) Ltd.*⁴, wherein the Supreme Court held as follows:

“It is well settled that the doctrine of *lis pendens* is a doctrine based on the ground that it is necessary for the administration of justice that the decision of a court in a suit should be binding not only on the litigating parties but on those who derive title *pendente lite*. The provision of this section does not indeed annul the conveyance or the transfer otherwise, but to render it subservient to the rights of the parties to a litigation.

27. Discussing the principles of *lis pendens*, the Privy Council in the case of *Gouri Dutt Maharaj v. Sukur Mohammed and others* AIR (35) 1948, observed as under:

“..The broad purpose of Section 52 is to maintain the status quo unaffected by the act of any party to the litigation pending its determination. The applicability of the section cannot depend on matters of proof or the strength or weakness of the case on one side or the other in *bona fide* proceedings. To apply any such test is to misconceive the object of the enactment and in view of the Board, the learned Subordinate Judge was in error in this respect in laying stress, as he did, on the fact that the agreement of 8.6.1932, had not been registered.”

11. In the light of the settled principles in the decision of the Supreme Court, which are taken note of by this Court, this Court is empowered to add any person at any stage of the proceedings including the final decree proceedings, if the person, whose presence before the Court is necessary for proper and effective adjudication of the issues involved and also for working out equities while passing the final decree. In view of the preponderance of the legal position laid down by the Supreme Court, as above, which was

³ (2007) 10 Supreme Court Cases 719

⁴ (2013) 5 SCC 397

followed by this Court in the above decision (1 supra), in the well considered view of this Court, the petitioner's case for impleadment deserves to be considered. Therefore, the order of the trial Court rejecting the subject application of the petitioner is liable to be set aside as it is opposed to the settled legal principles and is one passed on factually incorrect surmises.

12. Accordingly, the Civil Revision petition is allowed setting aside the impugned order. The petitioner is accordingly directed to be impleaded as a party respondent in I.A.No.206 of 2016. It is needless to state that he shall be given an opportunity to file a counter, if he is advised so to do, and then the trial Court shall proceed with the application in accordance with the procedure established by law. It is stated that on the death of the 1st defendant, who is the father of the petitioner herein, an application to implead the legal heirs of the deceased 1st defendant is filed and is pending before the trial Court. Considering the fact that the suit is a sufficiently old suit of the year 1965, the trial Court is directed to dispose of the said application as expeditiously as possible and in any event, within one month from the date of receipt of a copy of this order and shall also endeavor to dispose of any other interlocutory applications, if any pending and which are required to be disposed of, and eventually the final decree petition, as expeditiously as possible.

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

M. SEETHARAMA MURTI, J

19th December 2016

Note:- issue CC by 23.12.2016

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