

HONOURABLE SRI JUSTICE P.NAVEEN RAO
CIVIL REVISION PETITION NOs.2733 AND 2902 OF 2016

Date: 29.08.2016

CRP No. 2733 of 2016:

Between :

Valla Srihari S/o Rajaiah,
Aged about 54 years, occu:Teacher,
R/o. 1-328, Indiranagar, Narsampet,
Warangal and three others.

.... Petitioners/
proposed defendants 2 to 5

And

Rajitha Kumari W/o Shanker,
Aged about 37 years, Occu:Housewife,
R/o Peda Kanjarla (V), Patancheru(M),
Medak District and others.

.... Respondents/
Plaintiffs

This Court made the following :

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COMMON ORDER:

Respondents/plaintiffs instituted O.S.No.61 of 2010 in the Court of Principal Junior Civil Judge at Warangal praying to declare them as joint owners of the suit land and to grant possession of the suit land. In I.A.No.55 of 2010 filed by respondents injunction was granted on 04.02.2010.

2. Petitioners in CRP No.2733 of 2016 filed I.A.No.85 of 2016 to implead as defendants 2 to 5, and petitioner in CRP No.2902 of 2016 filed I.A.No.84 of 2016 to implead him also as defendant in the above suit.

3. The case of the petitioners in CRP No.2733 of 2016 is that they purchased the suit schedule property to an extent of Ac.2.20 guntas in Sy.No.362/1 of Sthambampalli Village, Geesugunda Mandal, Warangal District, by way of registered sale deed dated 28.03.2013 from the defendant and petitioner in CRP No.2902 of 2016 purchased Ac.0.20 guntas in the same survey number by way of registered sale deed dated 18.06.2014. Ever since, they are in possession and enjoyment of the suit schedule property. Petitioners claimed that they came to know about the institution of the suit by the respondents against the sole defendant on the same suit schedule property. According to the petitioners, since the property was sold to the petitioners, sole defendant is not evincing interest in prosecuting the suit and if decree is granted against the defendant without affording

due opportunity to the petitioners, grave prejudice would be caused to them. As petitioners have interest in the suit schedule property, they are proper and necessary parties and for proper adjudication of the litigation and being *bona fide* purchasers, they should be given due opportunity to contest the suit.

4. Respondents herein opposed the claim of the petitioners. According to the respondents, the suit was instituted in the year 2010 and injunction was granted on 04.02.2010, whereas the purchase was made by the petitioners on 28.03.2013 and 18.6.2014, respectively. According to the respondents, after injunction was granted by the trial Court, the same was informed to the Registration Office and wide publicity was given through the local daily newspapers cautioning general public against purchase of suit schedule property. Thus, petitioners cannot claim ignorance of the pending litigation.

5. Trial Court held that the present application is nothing but intend to delay the pending litigation and if the petitioners are *bona fide* purchasers, they could as well file a separate suit rather than trying to implead in the pending suit, and dismissed the applications.

6. Aggrieved thereby, these revision petitions are preferred.

7. Heard Sri B.Ranganatha Rao, learned counsel for the petitioners and Palle Srihari Nath, learned counsel for the respondents.

8. While reiterating the respective contentions as urged before the trial Court, the learned counsels made following submissions.

9. Sri. B.Ranganatha Rao, learned counsel for petitioners submitted that trial Court erred in dismissing the application summarily and without assigning due reasons. According to the learned counsel, trial Court is vested with ample powers to permit any person seeking to implead as defendant. To do complete justice, trial Court ought to have allowed the I.As., and permitted the petitioners to come on record

as defendants and to contest the suit. Trial Court grossly erred in not allowing the applications filed by the petitioners.

9.1. By placing reliance on the decisions of the Supreme Court in **Savitri Devi v. District Judge, Gorakhpur**^[1], **Thomson Press (India) Ltd. V Nanak Builders & Investors P.Ltd. and others**^[2] and decision of this Court in **Pelimelly Ramesh and others v. E.Sravan Kumar and others**^[3], he would submit that even if a party has knowledge about the injunction order granted, and during the pendency of the litigation he purchased the said property, still he is entitled to come on record as defendant and oppose the claim of the plaintiff. He would, therefore, submit that petitioners be permitted to implead as defendants in the pending suit.

10. Opposing the said contention, Sri. Palle Sriharinath submitted that in the face of the injunction order granted by the trial Court on 04.02.2010, the defendant could not have sold the property to the petitioners. In the facts of this case, petitioners cannot be treated as persons, who made a *bona fide* purchase of the suit schedule property. The transaction on which petitioners are relying is sham transaction brought about at the instance of the defendant to frustrate the litigation and to protract the litigation. The respondents have taken all steps to inform the public in general about the pending litigation and the injunction order granted and, therefore, petitioners cannot plead ignorance of the injunction order to claim themselves as *bona fide* purchasers. If at all the petitioners have any grievance, they ought to have proceeded against defendant, who had illegally sold the property to them, contrary to the injunction orders granted by the trial Court.

10.1. In support of his contention, he placed reliance on the decision of the Supreme Court in **Sarvinder Singh v. Dalip Singh and others**^[4].

11. The issue for consideration is whether petitioners are entitled to be impleaded as defendants to the suit ?

12. This very issue was considered by the Supreme Court in **Thomson Press (India) Limited**.

12.1. In the said case, plaintiff–respondent no.1 instituted suit in the High Court of Delhi against the defendants- respondents Sawhneys' for a decree for specific performance of agreement. During the pendency of the above suit, Defendants Sawhneys' executed five sale deeds in favour of the appellant before the Supreme Court. Based on those sale deeds, appellant moved application under Order I Rule 10 of CPC to implead as defendants. Learned single Judge of the Delhi High Court dismissed the application on the ground that there was an injunction order passed on 04.11.1991 restraining the defendants- Sawhneys' from transferring or alienating the suit property and the purported sale deeds executed by the defendants in favour of the appellant was in violation of the undertaking given by the respondents, which was in the nature of injunction. On appeal, Division Bench affirmed the order of the single Judge.

12.2. The question posed for consideration by the Supreme Court reads as under:

“13. The question, therefore, that falls for consideration is as to whether if the Appellant who is the transferee *pendente lite* having notice and knowledge about the pendency of the suit for specific performance and order of injunction can be impleaded as party under Order 1 Rule [10](#) on the basis of sale deeds executed in their favour by the Defendants Sawhneys'.”

12.3. On review of the entire case law on the subject, Justice M.Y.Eqbal observed as under:

“35. Taking into consideration all these facts, we have no hesitation in holding that the Appellant entered into a clandestine transaction with the Defendants-Sawhneys' and got the property transferred in their favour. Hence the Appellant - M/s Thomson Press cannot be held to be a bonafide purchaser, without notice.

36. On perusal of the two orders passed by the single judge and the Division Bench of the High Court, it reveals that the High Court has

not gone into the question as to whether if a person who purchases the suit property in violation of the order of injunction, and having sufficient notice and knowledge of the Agreement, need to be added as party for passing an effective decree in the suit.

37. As discussed above, a decree for specific performance of a contract may be enforced against a person claimed under the Plaintiff, and title acquired subsequent to the contract. There is no dispute that such transfer made in favour of the subsequent purchaser is subject to the rider provided under Section [52](#) of the Transfer of Property Act and the restrain order passed by the Court.

(38) to (41) xxxxxx

42. Having regard to the law discussed hereinabove and in the facts and circumstances of the case and also for the ends of justice the Appellant is to be added as party-Defendant in the suit. The appeal is, accordingly, allowed and the impugned orders passed by the High Court are set aside.”

12.4. While concurring with Justice Eqbal, Hon’ble the Chief Justice, observed as under:

“52. There is, therefore, little room for any doubt that the transfer of the suit property *pendete lite* is not void *ab initio* and that the purchaser of any such property takes the bargain subject to the rights of the Plaintiff in the pending suit. Although the above decisions do not deal with a fact situation where the sale deed is executed in breach of an injunction issued by a competent Court, we do not see any reason why the breach of any such injunction should render the transfer whether by way of an absolute sale or otherwise ineffective. The party committing the breach may doubtless incur the liability to be punished for the breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent Court may issue in the suit against the vendor.”

12.5. After extracting the Order XXII Rule 10 of the CPC, learned Chief Justice observed as under:

“54.What has troubled us is whether independent of Order I Rule [10](#) Code of Civil Procedure the prayer for addition made by the Appellant could be considered in the light of the above provisions and, if so, whether the Appellant could be added as a party-Defendant to the suit. Our answer is in the affirmative. It is true that the application which the Appellant made was only under Order I Rule [10](#) Code of Civil Procedure but the enabling provision of Order XXII Rule [10](#) Code of Civil Procedure could always be invoked if the fact situation so demanded. It was in any case not urged by counsel for the Respondents that Order XXII Rule [10](#) could not be called in aid with a view to justifying addition of the Appellant as a party-Defendant. Such being the position all that is required to be examined is whether a transferee *pendete lite* could in a suit for specific performance be added as a party Defendant and, if so, on what terms.”

12.6. Learned Chief Justice further observed that a transferee *pendente lite* can be added as a party to the suit lest transferee suffers prejudice on account of the transferor losing interest in the litigation, post transfer (para 55).

13. Having observed, Supreme Court summoned up as under:

“58. To sum up:

(1) The Appellant is not a bona fide purchaser and is, therefore, not protected against specific performance of the contract between the Plaintiff's and the owner Defendants in the suit.

(2) The transfer in favour of the Appellant *pendente lite* is effective in transferring title to the Appellant but such title shall remain subservient to the rights of the Plaintiff in the suit and subject to any direction which the Court may eventually pass therein.

(3) Since the Appellant has purchased the entire estate that forms the subject matter of the suit, the Appellant is entitled to be added as a party Defendant to the suit.

(4) The Appellant shall as a result of his addition raise and pursue only such defenses as were available and taken by the original Defendants and none other.”

14. The decision in **Savitri Devi** case was also considered by the Supreme Court in the above decision. Similar directions are issued by this Court in **Pelimelly Ramesh**.

15. In **Sarvinder Singh**, Supreme Court held that the alienation would be hit by the doctrine of lis pendens by operation of Section 52 of Transfer of Property Act and therefore subsequent purchaser cannot be considered to be either necessary or proper parties to the suit. In the recent decision, **Thomson Press (India) Limited**, on review of the law on the subject, the Supreme Court held that a transferee *pendente lite* can be added as a party to the suit lest transferee would suffer prejudice on account of the transferor losing interest in the litigation, post transfer. Moreover, whether the petitioners have knowledge of pending litigation and the injunction order granted is the issue, which requires consideration.

16. Guided by the principles laid down by the Supreme Court in **Thomson Press (India) Limited**, the Civil Revision Petitions are allowed and the following directions are issued:

i) As the petitioners purchased the part of the suit schedule property during the pendency of the suit, they are entitled to be added as party defendants to the suit;

ii) The transfer in favour of the petitioners *pendente lite* is effective in transferring title to the petitioners, but such title remains subservient to the rights of the plaintiffs in the suit and subject to any direction, which the trial Court may eventually pass therein;

iii) Petitioners shall, as a result of their addition, raise and pursue only such defences as were available and taken by the original defendant and no other plea;

iv) it is made clear that by allowing these petitions, no opinion is expressed on the conduct of the defendant in selling the property to the petitioners herein contrary to the injunction order passed by the trial Court and it is left open to the respondents to prosecute their remedies as available in law against the original defendant.

Miscellaneous petitions if any pending shall stand closed. No costs.

JUSTICE P.NAVEEN RAO

Date: 29.08.2016

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[\[1\]](#) AIR 1999 SC 976

[\[2\]](#) 2013 (3) ALD 111 (SC)

[\[3\]](#) 2015 (4) ALD 284

[\[4\]](#) (1996) 5 SCC 539