

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

TUESDAY THE TWENTYEIGHTH DAY OF JUNE
TWO THOUSAND AND SIXTEEN

PRESENT
HONOURABLE SRI JUSTICE SURESH KUMAR KAIT

CIVIL REVISION PETITION NO. 2816 OF 2016

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Between:

Durgam Sambrajjam @ Rani & Ors. ... Petitioners/
Proposed defendants 3 to 7

Vs.

Jammula Adi Lakshmi & Ors. ... Respondents

Counsel for the Petitioners: Sri Sridhar Tummalapudi

Counsel for the Respondents: None appeared

The Court made the following: [order follows]

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT

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CIVIL REVISION PETITION NO. 2816 OF 2016

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O R D E R :

This Civil Revision Petition is filed by the petitioners/proposed defendants 3 to 7 questioning the order dated 26/3/2016 passed in I.A.No. 24 of 2016 in OS.No. 373 of 2016 by the III-Additional District Judge, Guntur, whereby the application filed by the petitioners/third parties under Order-1, Rule-10 of CPC has been dismissed being not maintainable.

2. Brief facts of the case are as submitted by the counsel for the petitioners is that originally the suit schedule property belongs to one Anupalepu Tirupatamma wife of late Anupalepu Kotaiah (died in the year 1983). The said Anupalepu Tirupathamma is none other than their paternal grandmother (mother of their deceased father Anupalepu Veeraiah died in the year 1986). She acquired the same by way of registered sale deed bearing document No. 4039/1982 on 26/4/1982 from Dodda Venkatakrishna Reddy and others. Subsequently, the said Anupalepu Tirupathamma died on 15/11/2000 intestate leaving

behind her legal heirs i.e., defendants 1 and 2 in the suit and petitioners (proposed defendants) i.e., (1) Durgam Sambraiyam @ Rani, (2) Chedella Lakshmi (3) Jammula Revathi, (4) Perecherla Veeranjaneyulu, (5) Percherla Rajesh (children of deceased Perecherla Rajya Lakshmi). The said Anupalepu Tirupathamma and her husband Kotaiah were blessed with one male child by the name late Anupalepu Veeraiah. The said Anupalepu Veeraiah is none other than the husband of first defendant in the suit by name Masthanamma. They were blessed with second defendant in the suit by name Anupalepu Prasad (son) and one deceased Perecherla Rajya Lakshmi (mother of proposed parties 6 and 7), herself, Chidella Lakshmi and Jamula Revathji (daughters).

3. The petitioners came to know that the plaintiff and defendants in the suit colluded and conspired together. Accordingly, the first respondent filed a suit in respect of plaint schedule property by creating a nominal suit agreement. The defendants have no right to enter into suit agreement regarding to the plaint schedule property, they are the only co-sharers along with them.

4. Learned counsel appearing on behalf of petitioners

submits that the petitioners are having equal rights, interest and possession over the suit schedule property. Since the death of their paternal mother, Anupalepu Tirupathamma all of them and defendants 1 and 2 in the suit have been in joint possession and enjoyment of the same. However, by suppressing the real facts, they are trying to grab the entire plaint schedule property by depriving their right over the plaint schedule property.

5. For the aforesaid reasons, the petitioners filed I.A.No. 24 of 2016 in OS.No. 373 of 2014 and the same was dismissed vide order dated 26/3/2016. While dismissing the application, the learned III-Additional District Judge, Guntur recorded at para Nos. 10 and 11 of the impugned order, as under:

10. Here in this case, respondent No.1, is seeking enforcement of agreement of sale dated 25/3/2013, said to have been executed by respondents 2 and 3, in which they alleged to have agreed to sell the suit property, and the law relating to impleadment of third parties in a suit for specific performance is well settled by the apex court in its judgment in KASTURI V/s. IYYAMPERUMAL AND ORS. [2005] 6 SCC-733, that in a suit for specific performance of contract of sale of property, a stranger or third party to the contract cannot be added as defendant in the suit, as in a suit for specific performance the question that is to be decided is the enforceability of contract of sale said to have been entered between the parties, and if the person seeking addition is added in the suit, the scope of the suit for specific performance would be enlarged, and it would practically be converted into a suit for title, therefore, for effective adjudication of the controversy involved in suit for specific performance presence of such parties cannot be said to be necessary at all.

11. From the principle enunciated in the above referred judgment, the same is squarely applicable to the facts of present case, and this court is of the view in the present suit, the question that has to be decided is “whether respondent No.1, is entitled for specific performance of contract of sale against respondents 2 and 3, and the petitioners herein are claiming title in themselves along with respondents 2 and 3, in the suit property, thus, this court is of the considered view, the petitioners ought to have filed a separate suit for declaration of title over the suit property, and that issue of title of petitioners, over the suit property cannot be brought into this suit, filed by respondent NO.1, for specific performance of contract of sale, said to have been made by respondents 2 and 3, When the petitioners are held not proper and necessary parties to the suit, to decide the controversy involved in the suit, and the point is answered accordingly against the petitioners.

6. Learned counsel appearing on behalf of the petitioners submits that learned trial Judge has relied upon judgment of

KASTURI V/s. IYYAMPERUMAL AND ORS^[1], reported in (2005)

6 SCC-733, which has been over ruled by the Hon’ble Supreme

Court in case of **VIDUR IMPEX AND TRADERS PVT. LTD AND**

ORS. V/s. TOSH APARTMENTS PVT. LTD AND ORS^[2], wherein

the Hon’ble Supreme Court in para No. 22 observed as under:

Learned senior counsel for the appellants emphasized that his clients were not aware of the agreement for sale executed by respondent No.2 in favour of respondent No.1, the suit for specific performance and permanent injunction filed by respondent No.1 in the Delhi High Court and injunction order dated 18/2/1993 till January, 2001 when the learned single Judge restrained respondent Nos. 2 and 4 from transferring possession of the suit property to the appellants, and argued that the High Court committed serious error by

declining their prayer for impleadment as parties to the suit. He submitted that the appellants are bonafide purchasers for consideration and are entitled to contest the suit filed by respondent No.1, else their right in the suit property will get jeopardized. Learned senior counsel then argued that the agreement for sale executed by the appellants in favour of Bhagwati Developers did not result in alienation of the suit property and the High court committed an error in holding that the appellants had no subsisting right in the subject matter of the suit. He relied upon the judgments of this court in Nagubai Ammal v/s. B. Shama Rao (6) AIR 1956 SC 593, Khemchand S. Choudhari v/s. Vishnu Hari (7) (1983) 1 SCC-18, Savitri Devi V/s. DJ, Gorakhpur (8) (1999) 2 SCC 577, Kasturi v/s. Iyyamperumal (9) 2005 (4) SCJ 196 = (2005) 6 SCC-733, Amit Kumar Shaw v/s. Farida Khatoon (10) 2005 (3) SCJ-452 = (2005) 11 SCC 403 = 2005 (4) ALT 182 (DNSSC), Mumbai Internal Airport (P) Ltd. (11) 2010 (5) SCJ-831 = (2010) 7 SCC-417 and Vinod Seth v/s. Devinder Bajaj (12) 2010 (7) SCJ-493 = (2010) 8SCC-1 and argued that respondent No.1 should be directed to implead the appellants as parties to the suit because their rights will be adversely affected if a decree is passed in favour of respondent No.1. Learned senior counsel submitted that impleadment of the appellants enable the Court to comprehensively decide all the issues and will also obviate the necessity of further litigation in the matter.

7. Accordingly, the Hon'ble Supreme Court in para No.36 of the judgment referred supra-2, held as under:

Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit.

2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the Court.
3. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.
4. If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.
5. In a suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

8. It not in dispute that the issue in the aforesaid suit was filed under specific performance Act and the issue before the court below was whether the plaintiff therein was entitled for specific performance to be performed or not? The petitioners herein moved an application claiming that the property in question being ancestral one, they are entitled to have share, therefore, the suit for the specific performance cannot be decided without impleading them.

9. The fact remains that by filing the application, the petitioners have sought declaration of the title and share to be

decided in their favour which cannot be permitted in a suit under specific performance of contract for the reason, the agreement was initiated between the two parties. The court has to decide only whether the agreement to be enforced or not. The learned trial Judge, while dismissing the application filed by the petitioners has suggested the petitioners that the issue raised by them cannot be decided. However, liberty was given that they may file suit for declaration of their title. In stead of filing the suit, the petitioners have challenged the impugned order before this Court.

10. The decisions cited supra-1 and 2 as noted above, cited by the counsel appearing for the petitioners have no relevancy in the facts and circumstances of the case.

11. In view of the above, I find no discrepancy and illegality in the order passed by the III-Additional District Judge, Guntur.

12. Accordingly, I find no merit in this Civil Revision Petition and the same is accordingly dismissed at the stage of admission. There shall be no order as to costs.

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

JUSTICE SURESH KUMAR

KAIT.

28/06/2016

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HONOURABLE SRI JUSTICE SURESH KUMAR KAIT

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Date: 28/06/2016
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Court Master: I s L

[\[1\]](#)) (2005) 6 SCC-733

[\[2\]](#)) 2012 (6) ALT-10 (SC)