

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.4311 of 2016

ORDER :

Heard the counsel for petitioner, and Sri S.V.R. Subrahmanyam, counsel for respondent nos.1 to 6.

2. This Revision is filed challenging the order dt.09.08.2016 in I.A.No.909 of 2015 in O.S.No.131 of 2015 on the file of Principal Junior Civil Judge, Palakol.

3. The petitioner has filed the above suit against 7th respondent seeking a declaration that he had easementary right of passage by necessity through the land belonging to 7th respondent, and also for a permanent injunction restraining 7th respondent from interfering with such right of passage of petitioner through the land of 7th respondent.

4. The respondent nos.1 to 6 filed application under Order I Rule 10 C.P.C. to get impleaded as defendant nos.2 to 7 in the suit alleging that they had prepared a layout and sold the plot to 7th respondent through which petitioner is seeking easementary right of passage. They contended that in the sale deed dt.18.05.2013 executed by them in favour of 7th respondent in respect of the land sold to him, there is a condition that the site cannot be used for any passage, and if any access is provided to petitioner through the plot of 7th respondent, grave prejudice would be caused to them. It is also alleged that

petitioner and 7th respondent are colluding with each other, and that respondent nos.1 to 6 had already filed O.S.No.81 of 2015 against 7th respondent for injunction not to alter the plot of 7th respondent as a road.

5. Counter-affidavit was filed by petitioner opposing the impleadment of respondent nos.1 to 6 contending that they are not necessary proper parties to the suit; and when the dispute of the petitioner is with the 7th respondent, only the 7th respondent can contest the case and not respondent nos.1 to 6. It was also pointed out that the respondent nos.1 to 6 have no title over the property of 7th respondent, and they have no interest in the subject matter of the suit, particularly, when the petitioner is not claiming any easementary right of passage over the land belonging to respondent nos.1 to 6. It was also stated that once the respondent nos.1 to 6 sold the property to the 7th respondent, their title passed to 7th respondent and the condition imposed in the sale deed has no validity.

6. By order dt.09.08.2016, I.A.No.909 of 2015 was allowed by the Court below. It held that there is only a partial restriction on the use of the site and it is not an absolute restriction and the sale is not hit by Section 10 of Transfer of Property Act, 1882. The Court below noted that petitioner is *dominus litis* but held that since the intention is to minimize the proceedings and cut short the litigation, the respondent nos.1 to 6 can be impleaded since they have *prima facie* interest over the property through which the petitioner is claiming easementary

right. It held that their interest is restricted so as to ensure that the property purchased by the 7th respondent is not converted as a road contrary to the clause in the sale deed.

7. The counsel for petitioner contended that the condition in the sale deed restricting use of the site as a road violates Section 10 of the Transfer of Property Act, 1882, and in any event, since the petitioner is the *dominus litis*, it is for him to choose against which person he would litigate, and he cannot be compelled to litigate against third-parties who have otherwise no interest in the property through which the petitioner is claiming easementary right of necessity.

8. On the other hand, the counsel for respondent nos.1 to 6 supported the order passed by the Court below.

9. In the present case, admittedly the petitioner has filed the suit seeking easementary right over the property belonging to 7th respondent. Therefore, he is the *dominus litis*. He cannot be compelled to litigate against persons against whom he has no cause of action. The principle of minimizing litigation quoted by the Court below has no application, since admittedly the respondent nos.1 to 6 have already filed O.S.No.81 of 2015 before the Junior Civil Judge, Palakol against 7th respondent. If they are so advised, they can take steps to implead petitioner herein in that suit or seek to get both the suits clubbed.

10. I am also of the opinion that the condition in the sale deed Ex.A.1, executed by respondent nos.1 to 6 in favour of 7th respondent restricting the 7th respondent from using the property sold as a road, would have no application, and would not bind the petitioner if the petitioner is otherwise entitled in law to an easementary right of necessity after trial in the suit.

11. Also, the condition in the sale deed cannot defeat the provisions of the Indian Easements Act, 1882 and such a condition does not give a right to respondent nos.1 to 6 to get impleaded in the suit filed by petitioner against the 7th respondent.

12. Therefore, I am of the opinion that the Court below has committed error of jurisdiction in allowing respondent nos.1 to 6 to get impleaded in O.S.No.131 of 2015 filed by petitioner against the 7th respondent.

13. Accordingly, the Civil Revision Petition is allowed, and the order dt.09.08.2016 in I.A.No.909 of 2015 in O.S.No.131 of 2015 on the file of Principal Junior Civil Judge, Palakol is set aside, and the said I.A. is dismissed. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-11-2016

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