

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.5528 of 2015

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the petitioner/plaintiff is directed against the orders dated 06.11.2015 of the learned II Additional Chief Judge, City Civil Courts, Hyderabad passed in IA.no.1015 of 2015 in OS.no.664 of 2014 filed by the 1st respondent herein/third party under Order I Rule 10 of the Code of Civil Procedure, 1908 requesting for its impleadment as defendant no.10 in the suit.

2. I have heard the submissions of the learned senior counsel appearing for the revision petitioner/plaintiff ('the plaintiff', for brevity) and the learned senior counsel appearing for the 1st respondent herein/proposed defendant no.10 ('the proposed defendant', for brevity). I have perused the material record. Respondents 2 to 10/the defendants 1 to 9 are stated to be not necessary parties.

3. The basic facts necessary for consideration, in brief, are as follows:

3.1 The instant suit for the specific performance of an agreement of sale dated 29.06.2013 was brought by the plaintiff to direct the defendants 1 to 9 to execute a registered sale deed and deliver physical possession of the suit schedule property after conducting a survey as per the TIPPON. The 3rd party/proposed defendant had filed the subject application requesting for its impleadment in the said suit as the 10th defendant *inter alia* contending as follows: "One Sogra Begum, the alleged predecessor in interest of the defendants 1 to 9 herein had filed the suit OS.no.364 of 1990 on the file of the Court of the learned V Additional Senior Civil Judge, City Civil Court, Hyderabad against one Madanlal Gupta and others for recovery of possession of a portion of the land out of Ac.9.20 guntas in Sy.no.391 (old) corresponding to old Sy.no.129 and revision Sy.nos. 219 and 220 of Shaikpet

village, Banjara Hills, Hyderabad as well as for perpetual and mandatory injunctions. The said suit was resisted by the defendants therein. Pending suit, the said sole plaintiff/Soghra Begum had died; and, the defendants 1 to 9, being her legal representatives, came on record and had prosecuted the said suit. After full-fledged trial, the said suit was dismissed on 27.01.2004 upholding the title and possession of Madanlal Gupta and his sons. The aggrieved defendants 1 to 9 herein had filed AS.no.15 of 2005 on the file of the Court of the learned III Additional Chief Judge, City Civil Court, Hyderabad. During the pendency of the said first appeal suit, one Atluri Subba Rao and (15) others claiming that they had purchased Ac.05.00 cents from the legal heirs of Madanlal Gupta under a registered AGPA got themselves impleaded as party respondents in the appeal suit. At the intervention of elders and wellwishers, the defendants 1 to 9 herein and the said Atluru Subba Rao and 15 others had arrived at an amicable settlement and accordingly an Award dated 26.02.2005 was passed in terms of the compromise whereunder the defendants 1 to 9 herein withdrew their claim over the extent of Ac.05.00 cents being claimed by Atluri Subba Rao group whereas Atluru Subba Rao group admitted the title and possession of the defendants 1 to 9 herein over the remaining extent of Ac.4.20 guntas. Thereafter, the defendants 1 to 9 had offered to sell the above mentioned Ac.4.20 guntas to the proposed defendant for a total sale consideration of Rs.20.00 Crores and the proposed defendant had agreed to purchase the said land and had paid a sum of Rs.1,00,32,405/- towards part of the agreed sale consideration under an agreement of sale executed in favour of the proposed defendant on 20.03.2006. While things stood thus, one J. Satyanarayana and (16) others had filed OS.no.484 of 2006 against the defendants 1 to 9 herein for a perpetual injunction claiming that they had purchased an extent of 19,800 Sq. yards under 18 registered sale deeds from out of Ac.5.00 cents belonging to Atluri Subba Rao's group and that the said defendants are interfering with their possession and enjoyment of the said property purchased by them. Later, the said suit was converted into one for declaration of title. The defendants had suppressed the pendency of the said suit and received further amounts from the proposed defendant towards part

of sale consideration. When the proposed defendant came to know of the said facts and questioned them, the defendants had informed that a mistake took place in describing the properties allotted to each party in the Award passed by the Lok Adalat in As.no.15 of 2006 and that they are trying to have the same rectified. However, the defendants had failed to resolve the dispute with J. Satyanarayana's group. The proposed defendant and the defendants 1 to 9 had decided to entrust the above property for development to a third party. While things are going on, the suit OS.no.484 of 2006 was decreed. Thereafter the defendants 1 to 9 had approached the proposed defendant and requested to amicably settle the dispute. During negotiations, the defendants 1 to 9 and J. Satyanarayana's group realizing that only 19.800 Sq.yards is physically available on the ground free from encroachments and that an extent of 3,200 Sq.yards is covered by Nala had agreed to jointly entrust the above land to the Developer for development. Accordingly, J. Satyanarayana's group as first party, the defendants 1 to 9 as second party and the Developer entered into a Tripartite compromise agreement on 24.06.2009. Pursuant to the above mentioned MOU and memorandum of compromise, the proposed defendant, the defendants 1 to 9 and J. Satyanarayana's group and the Developer entered into Development Agreement-cum-Agreement of Sale on 29.07.2010 bearing document no.3589 of 2010. Thereafter the defendants 1 to 9 had developed evil intentions to extort more money from the proposed defendant and the developer and had started creating hurdles. In pursuance of their evil designs, the defendants 1 to 9 have unilaterally cancelled the GPA dated 27.03.2006 through revocation deed dated 08.02.2013; and the same is illegal and *non est* in the eye of law. The alleged agreement to sell under which the plaintiff had purchased the suit schedule property from the defendant no.9 as GPA holder under the document bearing no.1441 of 2013 is sham and bogus document. The plaintiff is very much aware about the existence of agreement of sale dated 20.03.2006 and the DGPA in between the proposed defendant and the defendants 1 to 9 as the same were referred to in the alleged GPA no.1441 of 2013. The defendants 1 to 9 being aware that several third party rights and interests were created pursuant to the

DGPA have now come up with the above false, collusive and speculative suit to extort money from the proposed defendant and other parties to the DGPA. The plaintiff, at the instance of the defendants 1 to 9, had deliberately avoided to implead all the others who are parties to the above mentioned DPGA as parties to the suit and by sheer misrepresentation and suppression of material facts, the plaintiff had obtained an *ex parte* injunction orders. The said orders are adversely affecting the rights of the proposed defendant and the other parties to the said DGPA. Till the time the proposed defendant received legal notice from the plaintiff informing about the present suit and the *ex parte* injunction orders, the proposed defendant has no knowledge about the present suit. The proposed defendant had realized that the defendants 1 to 9 have played fraud on it. Therefore, it has become necessary for the proposed defendant to come on record and defend the legitimate rights and interests accrued to it under the agreement of sale dated 20.03.2006, GPA.no.1172 of 2006 and the DGPA, which are still in force. Any order or judgment that may be passed in the present suit would adversely affect the settled rights and interest of the proposed defendant and the other parties to the DGPA as well as third parties in whose favour rights have been created pursuant to the said DGPA. The impleadment of the proposed defendant as a party-10th defendant to the suit is just and necessary in the interests of justice. Otherwise the proposed defendant/3rd party would not only suffer irreparable loss and damage which cannot be compensated in any other manner but would also be subjected to grave injustice.”

3.2 The plaintiff filed a counter *inter alia* contending as follows: ‘The suit is filed for specific performance against his vendors who are owners and possessors of the suit schedule property. The implead petitioner might have entered into a DGPA; but, the same was cancelled by issuing revocation notice, for the reasons mentioned therein. There are no more DGPA holders. The proposed defendant is a stranger to the property as on the date of the execution of the suit agreement of sale in favour of the plaintiff by his vendors. The proposed defendant has no *locus standi* to file the petition. The petition is not maintainable. If the proposed defendant has any

grievance, it can file a separate suit. The proposed defendant had suppressed the facts about the revocation notice and the pending petitions before the High Court and the City Civil Court, Hyderabad. The proposed defendant is trying to come on record and enlarge the scope of the suit. The petition may be dismissed.'

3.3 During the course of enquiry before the trial Court, no documents were exhibited. On merits, the trial Court had allowed the petition and permitted the implead petitioner to come on record as defendant no.10. Aggrieved of the said orders, the present CRP is filed by the plaintiff.

4. The learned senior counsel for the plaintiff would contend as follows:

The trial Court had failed to appreciate the applicability of the provision of Order I Rule 10 of the Code to the suit for specific performance where the scope is purely between the agreement holder and the vendor. If the proposed party intends to raise his own dispute for adjudication, it amounts to enlarging the scope of the suit. The same is neither permissible nor valid under law. As such, the order impugned is contrary to law. The trial Court lost sight of the fact that the implead petitioner/proposed party is holding GPA under Development Agreement wherein the developing rights of the property were given to the third party viz., Trendset Builders. The proposed party intends to come on record to represent the interest of the Principal, but the Principals themselves are not interested in contesting the suit. The GPA holder has no vested right to come on record. The trial Court had committed gross illegality in passing the order impugned contrary to the judgment of the Supreme Court in **Deb Ratan Biswas v. Anand Moyi**. When there is a serious dispute between the GPA holder i.e., the proposed party and the Principal with regard to the GPA-cum-Development Agreement and the said dispute is pending adjudication before a different forum, the impleadment of the GPA holder is unwarranted and uncalled for. The trial Court had committed gross illegality in allowing the petition solely on the ground that the claim of the plaintiff is subject to decision with regard to cancellation of GPA cum Agreement of sale. The findings of the trial Court that the proposed party

is a party having interest in the property and it also has the right to agitate its rights against the subsequent agreement holder are unwarranted. The issue in regard to unilateral revocation of GPA and DGPA by the vendors/defendants 1 to 9 are neither relevant nor necessary for the purpose of a decision in the suit for specific performance. The trial Court ought to have dismissed the petition solely on the ground of suppression of material facts as the proposed party/implead petitioner did not mention about the pendency of the Arbitration Application no.2739 of 2013 on the file of the Court of the learned XXIV Additional Chief Judge, filed by the defendants against the proposed party/implead petitioner and others and also the fact that the application for seeking appointment of Arbitrator before the High Court. The party who approaches the Court by suppressing the material facts is liable to be thrown out at the threshold as per the decision of the Supreme Court in **Chenchulu Naidus'** case [AIR 1994 SC page 853]. The order impugned suffers from illegalities. The same is, therefore, liable to be set aside.

5. The learned senior counsel appearing for the plaintiff had supported the order of the trial Court.

6. I have noted the submissions. Though several documents were referred to in the affidavit of the proposed party/implead petitioner, no documents were exhibited on either side at the time of hearing of the interlocutory application before the trial Court. Therefore, the contents of the documents of the parties were not adverted to and not considered by the Court below. When an Interlocutory Application seeking impleadment is filed by a third party, the Court has to necessarily look into the documents of both the parties and examine the contents thereof to find out as to whether the pleadings find support from the recitals in the respective documents. No just decision as regards to the entitlement of the proposed party to be impleaded in the suit and its *locus standi* and interest can be made without looking into the documentary evidence that is referred to in the pleadings and sought to be relied upon by both the parties. In the light of the contentions urged by both the parties, it is necessary to refer to and carefully examine the recitals in the

documents before coming to a just decision in the matter. Unless the documents filed by both the parties are exhibited, the documents will not be sent to this Court from the trial Court along with the lower Court records. Unless the documents are before this Court and are duly exhibited, it is neither possible nor is just and proper to appreciate the rival contentions.

The trial Court ought to have allowed the parties to have their documents exhibited before disposing of the interlocutory application on merits. Even in a case where the parties failed to make a request to exhibit their documents for consideration in the interlocutory application, it is the duty of the Court to see that the necessary documents are exhibited. It is not a case where the parties specifically opted not to exhibit the documents for one reason or the other. Rule 60 of the Civil Rules of Practice says that the enquiry into an interlocutory application shall be conducted by receiving affidavits, but if the Judge directs that the evidence be given orally, then it shall be recorded and the exhibits be marked in the same manner as in the case of suits. This Court in a decision in **A.P. Minerals Development Corporation Limited Hyderabad v. M/s.Trimex Minerals Pvt.Ltd.**,^[1] and another decision in **Bhopal Reddy and another v. K.Lakshmi Bhai and another**^[2] held that the practice of marking the documents in the interlocutory application only shall be continued. It is thus obvious that the documents filed by either of the parties shall have to be marked, unless the parties specifically opt for not marking either on the ground of inadmissibility or for some other reasons of their own. In these circumstances, it is just and proper to allow the revision and remand the matter to the trial Court for disposal of the IA afresh, on merits, after following the procedure established by law, which was adverted to supra.

7. In this revision, the parties have filed certain documents for consideration. The parties are permitted to take return of the said documents and file them before the trial Court for consideration in the IA.

8. For the reasons assigned, the Civil Revision Petition is allowed and the order and the decretal order of the trial Court in I.A.No.1015 of 2015 are set

aside and the said IA is remitted to the trial Court with a direction to give an opportunity to both the parties to exhibit their respective documents and then dispose of the said application afresh, on merits and in strict accord with the procedure established by law. No costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

18th April, 2016
Vjl

[\[1\]](#) 1998(1) ALT 182

[\[2\]](#) 1998(1) ALD 770