

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.1827 of 2015

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is directed by the unsuccessful 1st respondent/plaintiff against the orders dated 06.04.2015 of the learned Junior Civil Judge, Gannavaram passed in I.A.no.257 of 2014 in O.S.no.16 of 2014 filed by a third party under Order I Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 ('the Code', for brevity) requesting to implead the said third party/proposed 7th defendant as party 7th defendant in the suit.

2. I have heard the submissions of the learned counsel appearing for the revision petitioner/plaintiff ('the plaintiff', for brevity) and the learned counsel appearing for the proposed 7th defendant/1st respondent herein ('the proposed 7th defendant', for brevity). I have perused the material record.

3. To begin with, it is necessary to advert to the pleadings of the parties.

3.1 The case of the proposed 7th defendant, in brief, is this:

He had purchased on 21.02.2014, for a valuable consideration of Rs.13,33,000/-, an extent of 450 square yards of site together with old cement sheet house (with its electric service connection) bearing D.No.1-113 situated at Peda Avutapalli village, Unguturu Mandal from the defendants 4 and 5, i.e., Shaik Abdul Munaf, S/o late Ahmad and Thota Ranga Rao, s/o late Shobana Chalam. The said two persons are the GPA Holders of Bandaru Sarojini, Bandaru Janardhana Rao and Patchipulusu Rajya Lakshmi, who are the defendants 1 to 3 in the suit and the mother, brother and sister of the plaintiff. Bandaru Nageswara Rao is the husband of the 1st defendant/Bandaru Sarojini. He and his wife, the 1st defendant, had jointly purchased 600 square yards of site from Avutapalli Venkata Ramachandra Rao and others under a registered sale deed duly registered as document bearing no.1997/1986 in the office of the Sub Registrar, Gannavaram; and,

since the date of the said purchase, he and his wife (the 1st defendant herein) enjoyed the property with absolute rights as lawful owners. On the intestate death of the said Nageswara Rao on 08.02.2007, the 1st defendant, who is his wife, and the plaintiff and the defendants 2 and 3 who are their children having succeeded to his share of the property are enjoying the entire property with absolute rights. Thereafter, the plaintiff and the defendants 1 to 3 had orally partitioned the total extent of 600 square yards. In the said oral partition, the plaintiff has got 150 square yards to his share on the Western side and the remaining 450 square yards together with cement sheet roof house (with the electric service connection) continued in the possession and enjoyment of the defendants 1 to 3 and they are enjoying the said property with absolute rights as lawful owners. As the defendants 1 to 3 are not getting sufficient income from the property that fell to their share in the original partition and as the house in existence has become very old, they had decided to sell the same. Accordingly, the defendants 4 and 5 had entered into possessory agreement of sale-cum-GPA with defendants 1 to 3 on 06.01.2014 and thereafter the defendants 4 and 5, who are the GPA holders and agreement holders of the said property of the defendants 1 to 3 had sold the said property, i.e., 450 square yards out of the plaint schedule property to the proposed 7th defendant under a registered sale deed dated 21.02.2014 bearing document no.1047 of 2014 as already stated supra and delivered physical possession of the same to the proposed 7th defendant; and, since the date of the said purchase, the proposed 7th defendant is in possession and enjoyment of the same as lawful owner. This proposed 7th defendant does not know about the filing of the suit by the plaintiff against the defendants for perpetual injunction in respect of entire extent of 600 square yards of site. The plaintiff is not having right, title, interest or possession over the entire extent of 600 square yards of site as in the oral partition amongst the family members of late Nageswara Rao, the plaintiff has got only 150 square yards on the Western side and not the entire extent as alleged by the plaintiff in the suit. Apart from that, the defendants 4 and 5 and the plaintiff do not have any right, title, interest or possession over the plaint schedule

property out of which, 450 square yards was duly purchased from defendants 1 to 3 through their GPA holders, i.e., defendants 4 and 5, for valuable consideration by this proposed 7th defendant. The said facts are well within the knowledge of the plaintiff. The plaintiff having had knowledge of the purchase of 450 square yards out of the plaint schedule property by the proposed 7th defendant even prior to the suit had intentionally not impleaded the proposed 7th defendant as a party to his suit for perpetual injunction. In the circumstances, the proposed 7th defendant is a proper and necessary party to the suit. Therefore, the petition is filed for his impleadment as party 7th defendant in the suit.

4. The plaintiff had filed a counter denying each and every allegation in the affidavit of the proposed 7th defendant filed in support of the petition for impleadment. In the said counter, it is *inter alia* contended as follows:

The contentions of the proposed party are blatant lies. The father of the plaintiff died intestate on 08.02.2007 as alleged by him is a blatant lie. The father of the plaintiff had executed a Will dated 03.12.2006 in a sound and disposing state of mind during his life time and under the said Will, the entire plaint schedule property is bequeathed to the plaintiff who was residing with him till his death. The father of the plaintiff had died on 08.02.2007 after the execution of the said Will. After the death of the father of the plaintiff, the plaintiff became the absolute owner of the plaint schedule property by virtue of the bequest under the Will and is enjoying the property with full and absolute rights. The mother of the plaintiff and others hatched a plan to dispossess the plaintiff from the plaint schedule property. Therefore, the suit for perpetual injunction was brought apprehending danger at the hands of the said persons. In view of the said facts, the question of the defendants 1 to 3 being in possession of the property that is being claimed by the proposed 7th defendant and their executing a GPA-cum-agreement of sale in favour of defendants 4 and 5 and they, in turn, executing a sale deed in the year 2014 in favour of the present proposed 7th defendant do not arise for consideration. To the knowledge of all concerned, the defendants 1 to 3

never enjoyed the plaint schedule property or any part thereof at any point of time, particularly, since the death of the father of the plaintiff as the plaintiff alone has become the absolute owner and possessor of the said property since the date of the death of his father. Therefore, the contentions of the proposed 7th defendant are false and invented. He is having no *locus standi* to file the petition. He is trying to mislead the Court only to cause loss to this plaintiff. Knowing fully well about the filing of the suit, he is observing the suit proceedings since inception. He was also present when the learned Court Commissioner had visited the suit schedule property on two occasions, but, had kept quiet without raising his little finger and had filed this petition belatedly pleading ignorance and innocence about the filing of the suit. The proposed 7th defendant is a native of the same village and he is a document writer and therefore, he knows all the facts. Styling himself as the owner of 450 square yards of the plaint schedule property and making false allegations, he is pleading for his impleadment. If really, it is a joint property, it is not explained as to what prevented the 7th defendant from obtaining the signature of the plaintiff as well on his document. The execution of the document, even if true, is not valid and it is void under law as it was obtained without the consent of the co-sharer/coparcener. The petition is liable for dismissal.

5. At the time of hearing, before the trial Court, no oral and documentary evidence was adduced on either side. On merits and by the order impugned, the trial Court had allowed the petition and permitted the proposed 7th defendant to be impleaded as party 7th defendant in the suit. Therefore, the aggrieved plaintiff had filed this revision.

6. The learned counsel for the plaintiff while reiterating the pleaded case of the plaintiff, which is extracted supra, would submit as follows:

The plaintiff is a master of his suit. He is a *dominus litis*. Therefore, a third party like the proposed 7th defendant cannot be permitted to be impleaded against the wishes of the plaintiff. It is for the plaintiff to choose

the parties against whom he intends to seek the relief. Moreover, the suit is filed for perpetual injunction. Since the defendants had threatened to dispossess the plaintiff and as the plaintiff apprehended danger at their hands, they were only impleaded as parties to the suit, as they are the only necessary parties. As the father of the plaintiff had executed a Will and as the plaintiff is a co-sharer/coparcener of the property in any view of the matter, the sale deed of the proposed 7th defendant is void and the said proposed party, who is making false allegations has no *locus standi* for seeking his impleadment in the suit of the plaintiff. In a suit for perpetual injunction, the only issue that falls for consideration is as to whether the plaintiff was and is in possession prior to the suit and as on the date of filing of the suit; and, the question of title is irrelevant. When no relief is sought for against the proposed party, his presence is not necessary for effective adjudication of the controversy in the suit. The trial Court had mislead itself in coming to a conclusion that the proposed 7th defendant is a necessary party. The trial Court had failed to take note of the fact that if the proposed 7th defendant is permitted to be impleaded, the scope of adjudication in the suit for perpetual injunction would get enlarged. The observation that a reading of the written statement of the contesting defendants would show that a cloud is cast over the title of the plaintiff in respect of the plaint schedule property and the further observation that it is undisputed that the plaintiff and the defendants 1 to 3 belong to one family and that the 1st defendant is one of the purchasers along with her husband under the document of the year 1986 are incorrect. The trial Court ought not to have considered the merits of the defence in the written statement of the defendants at a time when it is only considering an interlocutory application of a third party for his impleadment. The further observation of the trial Court that the presence of the proposed 7th defendant as a party defendant to the suit is essential for effective adjudication of the suit is also erroneous as the proposed 7th defendant has no semblance of right or title over the suit schedule property and as the plaintiff is stating that he has no cause of action against the proposed 7th defendant. Hence, the order is liable to be set aside.

7. On the contrary, the learned counsel for the proposed 7th defendant while reiterating his pleaded case and while supporting the orders of the Court below would contend as follows: 'The suit is filed in the first week of March 2014 by deliberately not impleading the proposed 7th defendant even though the defendants 1 to 3 through their GPA holders, i.e., the defendants 4 and 5 had executed a registered sale deed in favour of the proposed 7th defendant in respect of 450 square yards even before the institution of the suit, i.e., on 21.02.2014 having received a valuable consideration of Rs.13,33,000/- and had delivered possession of the said extent of property with house (along with its electric service connection) to the proposed 7th defendant. The proposed 7th defendant is specifically contending that there is a family partition amongst the plaintiff and his family members and that in that partition, the plaintiff has got only 150 square yards on the Western side and that the remaining 450 square yards fell to the share of his mother, sister and brother, who are the defendants 1 to 3 and that therefore, they have got every right to sell the said property to the proposed 7th defendant and that they have accordingly sold the same to the proposed 7th defendant. The proposed 7th defendant who has got right, title and interest as well as possession over a large extent of the plaint schedule property is entitled to be impleaded as a party defendant to the suit to protect his interests. Further, the defendants 1 to 3 having sold the property through their GPA holders, i.e., defendants 4 and 5 have lost interest in the matter and therefore, they may not be evincing interest in prosecuting their defence and therefore, if the suit is eventually decreed, it is the proposed 7th defendant, who would be put to serious and irreparable loss. If the suit is decreed ultimately in the absence of the proposed 7th defendant as a party to the suit, it would lead to complex situations in future and at the time of execution of the decree. Therefore, it is in the interests of justice to resolve the controversy once and for all and in the presence of all the parties interested in the *lis* including the proposed 7th defendant. Such a course would sub-serve the ends of justice.

8. I have bestowed my attention to the facts. I have given earnest consideration to the submissions.

9. Since the pleadings and the contentions are extracted supra, in detail, there is no need to dilate on the said aspects. However, it is necessary to restate the core facts and contentions. *Ex facie*, by virtue of the anterior document of the year 1986, the plaint schedule property was jointly purchased by Bandaru Nageswara Rao and his wife, who is the 1st defendant. The plaintiff and the defendants 2 and 3 are their children. The plaintiff contends that his father had executed a Will dated 03.12.2006 in a sound and disposing state of mind and that under that said Will, the father had bequeathed the entire plaint schedule property of an extent of 600 square yards to the plaintiff who is with him till he breathed his last and that since the date of death of the father of the plaintiff, he is continuing in possession and enjoyment of the entire plaint schedule property. *Per contra*, the case of the proposed 7th defendant is that Nageswara Rao - the father of the plaintiff and the defendants 2 and 3, had died intestate on 08.02.2007 and that after the death of the said Nageswara Rao, the property was partitioned among the plaintiff and the defendants 1 to 3 and that in the family partition, the plaintiff has got 150 square yards on the Western side and that the defendants 1 to 3 had got the remaining 450 square yards out of the plaint schedule property and that they had executed a GPA-cum-agreement of sale dated 06.01.2014 in favour of defendants 4 and 5 and that the said defendants 4 and 5 had sold the said 450 square yards to the proposed 7th defendant under a registered sale dated 21.02.2014 even prior to the institution of the suit and that therefore, he has acquired right, title and interest and that he is continuing in possession of the said extent of site with cement sheet house along with its electric service connection since the date of the said purchase by him. The trial Court having considered the facts and the submissions had allowed the petition.

9.1 The first contention is that the plaintiff being a *dominant litis*, the

proposed 7th defendant cannot be impleaded against his wishes that too, when the suit is for perpetual injunction. It is to be noted that in a decision in **Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and others**^[1], the Supreme Court had held that a Court, in its discretion, can direct a plaintiff, though *dominus litis*, to implead a person as a necessary party, if the facts and circumstances of the case so warrant. Therefore, the first contention in the facts and circumstances is devoid of merit. Further, the decision in **Mumbai International Air Port Pvt. Ltd.**

Vs. Regency Covention Centre and Hotels Pvt. Ltd. And others^[2]

also fortifies the said view. Dealing with the other aspects, it is to be noted that the contentions and issues as to whether the father of the plaintiff died intestate or testate and whether or not the property is a joint property and whether or not there is a partition among the plaintiff and the defendants 1 to 3 and whether or not the sale deed obtained by the proposed 7th defendant from the defendants 1 to 3 through their power of attorney holders (the defendants 4 and 5) in respect of 450 square yards out of the plaint schedule property is true and valid, etcetera are all complex questions of fact, which cannot be prejudged while considering an application by the proposed 7th defendant for his impleadment. As rightly contended, the defendants 1 to 3 having sold the property (their share of property), through their GPA holders (the defendants 4 and 5) to the proposed 7th defendant have evidently lost interest and therefore, they may not evince interest in the *lis* and defend the suit properly; and, that if it is so, the proposed 7th defendant, who has purchased the property even prior to the institution of the suit and who is claiming to be a *bona fide* purchaser would suffer the consequences, but not the defendants; therefore, unless the proposed 7th defendant is impleaded, he cannot raise and pursue the defences, which are available to him and which are also taken by the original defendants. If the suit is to be decreed in the absence of the proposed 7th defendant, who is claiming rights over a major part of the plaint schedule property under a regular sale deed obtained even prior to the institution of the suit, it would be difficult for the proposed 7th

defendant to avoid any complex situations that may arise in future or at the time of execution of the decree in the event of a decree being passed in favour of the plaintiff and against the defendants in the suit and that therefore, to give a quietus to the dispute once and for all, it is just and necessary to implead the proposed 7th defendant as otherwise it would lead to multiplicity of litigation. The law is well settled that the object of Order I Rule 10 of the Code is to bring before the Court at the one and the same time all the parties interested in dispute and finally determine all controversies once and for all in the presence of all parties without delay, inconvenient and expenses of the several actions, trials and inconclusive adjudication. Having regard to the facts peculiar to this case, this Court is of the opinion that the addition of the proposed 7th defendant as party 7th defendant to the suit is necessary for the purpose of resolving the controversy between the parties once and for all and to set at rest the controversy and that the refusal to grant the request for impleadment of the proposed 7th defendant would only create needless complications at the stage of execution in the event of a decree being passed in favour of the plaintiff in the absence of the proposed 7th defendant.

10. In view of the settled legal position, this Court need not go into the merits of the contentions of the parties in regard to whether the proposed 7th defendant is a *bona fide* purchaser or not and whether his sale deed is valid or not and also the rival contentions of the plaintiff. In the considered view of this Court, the facts, which are germane for consideration and the legal position applicable to the facts, are correctly appreciated by the trial Court and that the Court below is justified in passing the order impugned. For the aforementioned reasons, this Court finds that the order impugned does not brook interference.

11. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

04th July, 2016

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[\[1\]](#) (1992) 2 Supreme Court Cases 524

[\[2\]](#) AIR2010SC3109