

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 420 of 2016

ORDER:

Assailing the order dated 08.12.2015, passed in I.A.No.767 of 2015 in O.S.No.566 of 2003 on the file of the Prl. Junior Civil Judge, Karimnagar, wherein and whereunder an application filed U/o.I Rule 10 of C.P.C. to implead the petitioner as defendant No.16 in the main suit was rejected, the present Civil Revision Petition is filed.

The facts in issue are as under:

The plaintiffs, who are respondent No.1 and 2, herein filed O.S.No.566 of 2003 seeking the following reliefs.

- a) A decree directing defendant Nos.2 to 11 to execute and register the sale deed in favour of the plaintiffs conveying the suit land, fully described in the suit schedule, an extent of Ac.0.10 gts., in Sy.No.724/D situated at Bommakal Village, Karimnagar Mandal, in specific performance of the suit agreement dated 29.09.1995 by confirming the possession of the plaintiffs over the suit land. Failing which, the Court may be pleased to execute the registered sale deed in favour of the plaintiffs, through due process of law.
- b) Perpetual injunction restraining the defendant Nos.2 to 15 from interfering with the rights, possession and enjoyment of the plaintiffs over the suit land in any manner.

The averments in the plaint would show that originally the land admeasuring Ac.1.04 gts., in Sy.No.724/D belong to one

Rasool Khan. The said Rasool Khan executed an agreement of sale dated 29.09.1995 in favour of the plaintiffs. After execution of agreement of sale, the plaintiffs got issued public notice in local newspaper on 08.10.1995 informing about their purchase and calling for objections, if any. Since no objections were received, the plaintiffs are said to have paid a sum of Rs.60,000/- on 21.02.1996 to Rasool Khan, who inturn delivered possession to the plaintiffs. The plaintiffs also cleared the loan amount of Rs.50,000/- obtained by Rasool Khan from State Bank of India, Karimnagar Branch. The plaintiffs are due an amount of Rs.29,000/- towards balance sale consideration as per the agreement of sale. While things stood thus, one Syed Bin Awaz filed O.S.No.15 of 1996 on the file of the Senior Civil Judge, Karimnagar against Rasool Khan, plaintiffs and others alleging that he purchased the suit schedule property from Rasool Khan on 26.09.1988 for a consideration of Rs.1500/-. Immediately, the plaintiffs approached the said Rasoon Khan, who assured them that he will execute the registered sale deed after disposal of O.S.No.15 of 1996. During pendency of the suit, the said Rasool Khan died and defendant Nos.1 to 11 who are the legal heirs of Rasool Khan were brought on record as defendants. The said suit was dismissed on 19.02.2003. After dismissal of the said suit, the plaintiffs approached defendant Nos.1 to 11 to receive the balance sale consideration of Rs.29,000/- and to execute registered sale deed in their favour, but defendant Nos.1 to 11 postponed the same on one or other pretext. Hence, the plaintiffs filed O.S.No.566 of 2003. While so, defendant Nos.12 and 13 filed I.A.No.614 of 2008 seeking rejection of the plaint on the ground that the suit was barred by limitation. The said I.A. was allowed on 04.08.2008 and rejected the plaint. Aggrieved by the

same, the plaintiffs filed A.S.No.16 of 2010 on the file of the III Additional District Judge, Karimnagar. By a judgment dated 22.01.2014, the III Additional District Judge, Karimnagar, allowed A.S.No.16 of 2010 by setting aside the order and decree passed in O.S.No.556 of 2003 and remanded the matter back to the trial Court for proper trial of all the issues arising in the case and for disposal of the same afresh in accordance with law. Challenging the same, the defendants preferred second appeal before this Court and the same is pending. After remand, the trial in the said suit proceeded further and the petitioner herein was examined as DW.2, as he purchased the property from defendant Nos.12 and 13 through registered sale deed bearing No.5126 of 2000 dated 27.09.2000. Since DW.1 did not subject himself for cross examination and the petitioner was examined as DW.2, he filed I.A.No.767 of 2015 seeking to implead him as defendant No.16 so as to advance arguments on his behalf. The trial Court dismissed the said petition. Aggrieved by the same, the present Civil Revision Petition is filed.

The short point that arises for consideration is whether the petitioner was justified in seeking impleadment as defendant No.16.

Relying upon the judgments of the Apex Court in ***A.Nawab John and others v. V.N.Subramaniam***^[1] and ***Thomson Press (India) Limited v. Nanak Builders and Investors Private Limited and others***^[2], learned counsel for the petitioner submits that the trial Court erred in rejecting the application of pendente lite purchaser for impleadment. He further submits that the reasons given by the trial Court that the petitioner kept quiet for

ten years is absolutely incorrect, since the plaint was rejected in the year 2008, against which an appeal was filed, which was allowed on 22.01.2014.

On the other hand, learned counsel for the plaintiffs would submit that the petitioner was aware about the litigation between the parties and there was no reason for him to keep quiet till 2015. He further submits that at the time of execution of sale deed, the General Power of Attorney Holder Mr. Rasool Khan died, as such, the said sale has no legal sanctity. He further submits that the allegation of collusion between DW.1 and the plaintiffs is incorrect.

In order to appreciate the rival submissions, it may be useful to refer to Order I, Rule 10 of C.P.C. which reads as under:

Order I. Rule 10. Suit in name of wrong plaintiff.(1)

Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or add parties. The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any

disability without his consent.

Where defendant added, plaint to be amended. (4)

Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the Indian Limitation Act, 1877, Section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

From a reading of the above said provision, it is clear that sub-rule (2) of Rule 10 of Order I gives a wider discretion to the Court to meet every case or defect of a party and to proceed with a person who is either a necessary party or a proper party whose presence in the court is essential for effective determination of the issues involved in the suit.

It may also be necessary to refer to Order XXII Rule 10 of C.P.C.

10. Procedure in case of assignment before final order in suit. – (1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).

In **Thomson Press (India) Limited** case (2 supra) the Apex Court held as under:

“A simple reading of the above provision would show that in cases of assignment, creation or devolution of any interest during the pendency of a suit, the suit may,

by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved. What has troubled us is whether independent of Order I Rule 10 CPC 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 CPC but the enabling provision of Order XXII Rule 10 CPC 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 pendente lite could in a suit for specific performance be added as a party defendant and, if so, on what terms.”

In **A.Nawab John and others case (1 supra)** the Apex Court held as under:

“This Court on more than one occasion held that when a pendente lite purchaser seeks to implead himself as a party - defendant to the suit, such application should be liberally considered. This Court also held in [Smt. Saila Bala Dassi v. Smt. Nirmala Sundari Dassi and Another](#)^[3], that, “justice requires”, a pendente lite purchaser “should be given an opportunity to protect his rights”. It was a case, where the property in dispute had been mortgaged by one of the respondents to another respondent. The mortgagee filed a suit, obtained a decree and ‘commenced proceedings for sale of the mortgaged property’. The appellant Saila Bala, who purchased the property from the judgment-debtor subsequent to the decree sought to implead herself in the execution proceedings and resist the execution. That application was opposed on various counts. This Court opined that Saila Bala was entitled (under Section 146 of the C.P.C.) to be brought on record to defend her interest because, as a purchaser pendent

elite, she would be bound by the decree against her vendor.

There is some divergence of opinion regarding the question, whether a pendente lite purchaser is entitled, as a matter of right, to get impleaded in the suit, this

Court in ***Amit Kumar Shaw v. Farida Khatoon***^[4], held that “Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the court has a discretion to make him a party. But the transferee pendente lite can be added as a proper party if his interest in the subject- matter of the suit is substantial and not just peripheral. A transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, where the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party, under Order 22 Rule 10 an alienee pendente lite may be joined as party. As already noticed, the court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where his predecessor-in-interest is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case.”

From the judgments referred to above, it is clear that a pendente lite purchaser’s application seeking for impleadment should normally be considered liberally since he is interested in the property which he has purchased and he has to protect his interest.

The main ground urged by the learned counsel for the petitioner is that the trial Court dismissed the application on the

ground that the same was made ten years later. But it is to be noted that the suit which was filed in the year 2003, was dismissed on 04.08.2008 pursuant to an application made by defendant Nos.12 and 13 seeking rejection of plaint. Thereafter, an appeal came to be filed, which was allowed on 22.01.2014. It is true that the father of the petitioner did not take any steps challenging the order passed in I.A.No.1440 of 2005, but at the same time it is to be noted that from the year 2008 there was no progress in the case, in view of the I.A. filed by defendant Nos.12 and 13 seeking rejection of the plaint which came to be allowed on 23.07.2008 and then the appeal filed, which was disposed of in the year 2014. Therefore, from the year 2008 to 2014 there was no progress in the trial of the case. Further, after completion of the plaintiffs' evidence, DW.1 was examined in chief and thereafter he did not subject himself for cross examination. Thereafter the petitioner was examined as DW.2 and after his cross examination, he wants to come on record apprehending that there was some collusion between DW.1 and the plaintiff and he being a person, who purchased the property from defendant Nos.12 and 13, felt that if the same is not contested by him, he will suffer irreparable loss. In view of the above, he made an application before the Court seeking impleadment as defendant No.16.

Learned counsel for the petitioner submits since the petitioner is already examined as DW.2 he only seeks an opportunity to argue the matter on his behalf and that he will not make any application for recall/re-open of any of the witnesses or summon any witness for further examination. The objections raised by the respondent counsel as to whether the petitioner has any right over the property in view of the death of Rasool Khan, can only be adjudicated during the course of trial and the same

cannot be decided at this stage of the case.

In view of the judgments referred to above and having regard to the claim made by the petitioner over the property in issue, this Court is of the view that the petitioner will be a necessary party to the suit. Hence, the Civil Revision Petition is allowed to the extent of permitting the petitioner or his counsel to advance arguments in the suit, as agreed upon by the counsel for the petitioner.

There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

08.02.2016

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[\[1\]](#) (2012) 7 SCC 738

[\[2\]](#) (2013) 5 SCC 397

[\[3\]](#) AIR 1958 SC 394

[\[4\]](#) (2005) 11 SCC 403