

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.5928 of 2016

ORDER:

This petition under Article 227 of the Constitution of India is filed challenging the order dated 13.10.2016 passed by V Additional Junior Civil Judge, Warangal, allowing I.A.No.266 of 2016 in O.S.No.1155 of 2007.

In the said suit, respondent No.4 herein filed the aforesaid I.A. under Order I Rule 10(2) CPC to implead him as plaintiff No.4 in the suit as he is a proper and necessary party to it. In the affidavit filed in support of the said I.A., he stated that he purchased the schedule property from respondent Nos.1 and 2 under simple sale deed dated 20.04.2006 and his name was mutated in the revenue records and pattadar pass book and title deed were issued under the provisions of ROR Act vide Patta No.998 and Pass Book No.092189. Thus, he is in possession and enjoyment of the land. Respondents 1 to 3 herein filed the aforesaid suit against the petitioners herein for specific performance of agreement of sale executed by late Siddam Ganesh, who is the husband, father and son of petitioners 1, 2 & 3 and 4 respectively, in favour of respondents 1 and 2 herein and

that respondents 1 and 2 herein sold away the schedule property in favour of respondent No.4 herein and that respondent No.3 herein is the father of respondent No.4 herein and therefore he is a proper and necessary party to adjudicate the real dispute between the parties and prayed to allow him to come on record as plaintiff No.4 in the suit.

The petitioners herein filed counter before the trial Court alleging that the claim of respondent No.4 herein/proposed plaintiff No.4 cannot be decided in a suit for specific performance; that at this belated stage, he cannot come on record as plaintiff No.4 in the suit to claim any relief and that the claim is barred by limitation and therefore, the aforesaid application is frivolous and they prayed for dismissal of application.

Upon hearing argument of both the learned counsel, the trial Court passed the impugned order allowing the application holding that respondent No.4 herein/proposed plaintiff No.4 is a proper and necessary party to the suit in view of simple sale deed allegedly executed by plaintiffs 1 and 2 in his favour.

Aggrieved by the impugned order, the present revision is filed on various grounds mainly contending that in a suit for specific performance based on an agreement of sale, a third party

cannot come on record as a party to the suit since it is a *lis* between the parties to the agreement and the third parties are no way concerned but the trial Court committed serious error in allowing such petition impleading the third party as plaintiff No.4 in the suit.

During hearing, Sri V. Hariharan, counsel for the petitioners, would contend that the relief claimed in the suit is only for specific performance against the executants of the agreement of sale and the Court at best is competent to decide the issue between parties to the agreement and not the third parties. If a third party intends to settle his claim, he has to file a separate suit but his claim cannot be decided in the suit filed by the plaintiffs. In such case, the third party cannot come on record as he is neither necessary nor proper party to the suit and the suit can be decided effectually even in his absence. Therefore, the proposed party cannot be allowed to come on record as plaintiff No.4 in the suit and thereby, prayed to set aside the impugned order dismissing the petition filed by respondent No.4 herein/proposed plaintiff No.4.

Whereas, Sri K.V.Bhanu Prasad, counsel for the respondents, supported the order under challenge on the ground that the third party can come on record at any stage when his

rights are affected on account of the decree being passed by the trial Court and that respondent No.4 having purchased the property under a simple sale deed, mutated his name in the revenue records and obtained pattadar pass book and title deed, can come on record as plaintiff No.4 in the suit and there is no error in the order passed by the trial Court and thereby, prayed to dismiss this revision petition confirming the order passed by the trial Court.

In view of rival contentions and the material available on record, the sole point that arises for consideration is:

“Whether a third party (not a party to the agreement) can come on record in a suit for specific performance as plaintiff?”

Order I Rule 10(2) CPC deals with adding or striking out of 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 questions involved in the suit, be added.

The Madras High Court in **Mahadeva Rice and Oil Mills v. Chennimalai Gounder**¹ formulated certain tests as guidance for the Courts to exercise power under Order I Rule 10 CPC. They are as follows:

- (1) If, for the adjudication of the “real controversy” between the parties on record, the presence of a third party is necessary, then he can be impleaded.
- (2) It is imperative to note that by such impleading of the proposed party, all controversies arising in the suit and all issues arising thereunder may be finally determined and set at rest, thereby avoiding multiplicity of suits over a subject-matter which could still have been decided in the pending suit itself;
- (3) The proposed party has a defined, subsisting, direct and substantive interests in the litigation, which interest is either legal or equitable and which right is cognizable in law;
- (4) Meticulous care should be taken to avoid the adding of a party if it is intended merely as a ruse to ventilate certain other grievances of one or the other of the parties on record which is neither necessary or expedient to be considered by the Court in the pending litigation; and
- (5) It should always be remembered that considerable prejudice would be caused to the opposite party when irrelevant matters are allowed to be considered by Courts by adding a new party whose interest has no nexus to the subject-matter of the suit.

The Apex Court in **Razia Begum v. Sahebzadi Anwar Begum and others**², specifically pointed out that to permit a third party to come on record, under Order I Rule 10(2) CPC, wide power of discretion is conferred on the Court to meet every case

¹ AIR 1968 Mad 287

² 1958 AIR SC 886

of defect of parties but is subject to two limitations. The limitations are that the Court has no power to join a person as a party if he could not have been originally impleaded under Order I Rule 1 or Rule 3 CPC and that the presence of the person added must be necessary to effectually and completely adjudicate upon and settle all points involved in the suit if persons who are sought to be impleaded have no subsisting right over the properties and they are sought to be impleaded only for the purpose of getting their evidence and it is not proper to make them parties to the suit and that the petitioners' apprehension that they would be driven to the necessity of filing a separate suit against those persons is not sufficient justification to compel the plaintiff to implead them as parties to the suit.

Thus, keeping in view, the guidelines laid down by the Apex Court and Madras High Court, I have to examine whether the proposed party (third party), who is claiming purchase of the property by a simple sale deed, can be permitted to come on record as plaintiff No.4 in the suit. The principle laid down by both the Apex Court and Madras High Court is consistent and is applicable to the facts of the present case. Respondent No.4 has no direct interest in the schedule property except contending that he purchased the property under simple sale deed, which is

invalid under law as it would not create or confer any title to the property and thereby, he is not entitled to claim any right based on such document. If he intend to claim right based on such simple sale deed, his remedy is otherwise and he has to file separate suit for appropriate relief but his right cannot be decided in the present suit filed for specific performance. Admittedly, he is not a party to the agreement of sale and therefore, real dispute is between the parties to the agreement of sale and the third parties' rights cannot be decided in the suit filed for specific performance based on the agreement of sale.

The Apex Court in **Mumbai International Airport Private Limited v. Regency Convention Centre and Hotels Private Limited and others**³, while deciding a similar issue, concluded that when a proposed party had no interest either in the present or in future, he cannot be allowed to come on record either as a plaintiff or as a defendant. For impleading as defendant or plaintiff, he must show his actual interest in the property but not commercial interest. In the facts of the above cited judgment, the appellant is neither a purchaser nor a lessee of the suit property and has no right, title or interest therein. Even then, it wanted to come on record as a party to the suit for specific performance. Therefore, if the third party claims any right or remedy against

³ AIR 2010 SC 3109

the appellant, in a suit for specific performance, he cannot be impleaded as a necessary party.

In **A. Gyaneshwar Rao v. Mahmood Shareef and another**⁴, the single Judge of this Court held that for deciding suit for specific performance, subject matter of the suit is apparently confined to plaintiff and defendant and it may not be *ex facie* strictly necessary to adjudicate upon a claim sought to be laid by the third party. Therefore, the third party cannot be allowed to come on record in a suit for specific performance.

In **Kasturi v. Iyyamperumal and others**⁵, the Apex Court discussed scope of Order I Rule 10 CPC with reference to Section 19 of the Specific Relief Act, 1963.

Section 19 of the Specific Relief Act, 1963, deals with the relief against parties and persons claiming under them by subsequent title. Even according to the said Section, any other person claiming title through vendor of plaintiffs arising subsequent to the contract, he may be impleaded as a party.

In the present case, respondent No.4 herein/proposed plaintiff No.4 is claiming right in the property based on simple sale deed which would not create any title to the immovable

⁴ AIR 1982 AP 155

⁵ AIR 2005 SC 2813

property because of subsequent or earlier contract or agreement. Therefore, the case of respondent No.4 herein/proposed plaintiff No.4 would not fall within Section 19 of the Specific Relief Act, 1963.

In the facts of the above cited judgment (5 supra), when a stranger to a contract to be added as a party claiming interest in the property sought for his impleadment in the suit filed by the appellant for specific performance of sale of contracted property against respondents 2 and 3 therein although respondents 1 and 4 to 11 were not parties to the contract however setting up a claim of independent title and possession over contracted property, filed an application to be impleaded in a suit, trial Court allowed the said application and in the revision, the High Court upheld the finding of the trial Court. In the Special Leave Petition, the Apex Court held that in a suit for specific performance of a contract for sale, *lis* between appellant and respondents 2 and 3 could only be gone into and it was not open to Court to decide whether respondent Nos.1 and 4 to 11 had acquired any title and possession. The suit for specific performance of sale could not be converted into suit for title and possession and merely in order to find out who was in possession of contracted property, a third

party or a stranger to contract cannot be added in a suit for specific performance of contract for sale.

Therefore, the third parties who are claiming independent title cannot be permitted to come on record either as plaintiff or as defendant since it is a *lis* between the parties under the agreement of sale.

Though respondent No.4 herein/proposed plaintiff No.4 is claiming that he acquired title to the property under simple sale deed i.e., un-registered sale deed, that will not confer any title or interest in the property. Even otherwise, for a person, who is claiming independent title or right in the property contracted, remedy is to approach the Court for appropriate relief in a different suit but not the suit filed by plaintiffs 1 to 3, who are claiming independent right over the contracted property, since he is not entitled to any relief in the suit filed by the plaintiffs. Therefore, the rights of the third parties cannot be adjudicated in such suit for specific performance as it is limited to the issue to be decided in the suit between the parties to the contract or agreement, but not a third party. But, the trial Court exercised discretion erroneously and impleaded respondent No.4 herein/proposed plaintiff No.4 in a suit for specific performance without understanding the scope of the suit for specific

performance and without looking at Section 19 of the Specific Relief Act, 1963.

If really the proposed plaintiff is entitled to claim any title or right, he should approach the Court by filing an appropriate suit before the competent Court, but his rights cannot be adjudicated in a suit for specific performance between the parties to the agreement or contract. Thus, I find the impugned order is erroneous and the same is liable to be set aside.

In the result, the Civil Revision Petition is allowed setting aside the order, dated 13.10.2016 passed by V Additional Junior Civil Judge, Warangal, in I.A.No.266 of 2016 in O.S.No.1155 of 2007. However, it is left open to respondent No.4 herein/proposed plaintiff No.4 to redress his grievance in appropriate suit.

Consequently, pending Miscellaneous Petitions, if any, shall stand closed.

M.SATYANARAYANA MURTHY, J

21st JUNE, 2017.

kvni