

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2788 of 2017

ORDER:

1) Assailing the order dated 30.03.2017 passed in I.A.No.285 of 2016 in O.S.No.88 of 2012 on the file of the Special Sessions Judge-cum-IV Additional District Judge, Tirupati, wherein an application filed by the petitioners/proposed parties to implead them as defendants 2 and 3 in the above suit, was rejected, the present C.R.P. is filed under Article 227 of the Constitution of India.

2) The averments made in the affidavit filed in support of the petition shows that O.S.No.88 of 2012 came to be filed by the first respondent herein against the second respondent herein for specific performance of an agreement. Pending the said suit, the impugned application came to be filed by the petitioners to implead themselves as respondents, raising various grounds. The same was opposed by the first respondent contending that this being a suit for specific performance, the petitioners, who are third parties to the suit have no locus to come on record and if they are aggrieved by any decree passed, they can take steps in subsequent proceedings. After considering the rival submissions made, the trial court rejected the request of the petitioners. Challenging the same, the present revision came to be filed.

3) Relying upon the judgment of the Apex Court in **Kasturi v. Iyyamperumal and others**¹ and also two judgments of this court in **Mitta Sanjeeva Redy and another v. Shaik Fakruddin and another**² and **D.Shobha and others v. D.Prameela Kumari and another**³, the learned counsel for the respondent would submit that the request of the petitioners, who intends to come on record though they are nothing to do with the specific performance of contract, executed between the first and second respondents, cannot be accepted.

4) The same is opposed by the learned counsel for the petitioners contending that in view of the relationship between the petitioners, who are proposed parties, and also the second respondent herein and having regard to the fact that a suit was already filed by the petitioners vide O.S.No.62 of 2015 against the second respondent herein for partition, he submits that no prejudice would be caused to the respondent herein if the petitioners come on record. In support of his plea he relied upon a judgment of the Apex Court in **Robin Ramjibhai Patel v. Anandibai Rama and others**, C.A.No.10789 of 2016 (S.L.P.(C) No.31087 of 2014) decided on 10.11.2016

5) It is to be noted herein that two suits came to be filed by either parties. One is filed by the petitioners herein for partition

¹ (2005) 6 Supreme Court Cases 733

² 2012(1) ALD 322

³ 2012(2) ALD 89

of the properties, in which the property in dispute is also one of the properties for partition. The said suit is numbered as O.S.No.62 of 2015. Prior to the said suit, O.S.No.88 of 2012 came to be filed by the first respondent herein against the second respondent herein for specific performance of agreement. In Transfer O.P.No.156 of 2016, the learned District Judge clubbed both the suits, which order has become final, as the same is not challenged till date.

6) Referring to the judgment in **Kasturi v. Iyyamperumal** and others case, the Apex Court in **Robin Ramjibhai Patel v. Anandibai Rama** and other observed as under :-

8. In the aforesaid context, this Court also considered the provisions of Order 1, Rule 10, Code of Civil Procedure, and in paragraph 7 it expressed its view that the relevant provisions show that the necessary parties in a suit for specific performance of a contract for sale are not only parties to the contract or their legal representatives but also a person, who had purchased the contracted property from the vendor. It was further elaborated that "in equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with or without notice of the contract, but a person, who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party."

7) From the judgment of the Apex Court referred to above, it is clear that the purchaser is a necessary party as he would be affected if he had purchased with or without notice of the contract. But a person, who claims adversely to the claim of a vendor is, however, not a necessary party. In the instant case, the

petitioners cannot be said to be persons who adversely claim any right over the property. According to him, they are entitled for 2/3rd share in the property and the first respondent herein is only a Kartha of the property.

8) Be that as it may, this Court is of the view that having regard to the nature of interest the petitioners have over the property, relationship between the petitioners and first respondent and in view of the order passed by the District Court in clubbing both the suits i.e., O.S.No.62 of 2015 and O.S.No.88 of 2012, this Court is of the view that no prejudice would be caused if these petitioners are added as defendants 2 and 3 in O.S.No.88 of 2012.

9) Hence, the Civil Revision Petition is allowed by setting aside the impugned order dated 30.03.2017 passed in I.A.No.285 of 2016 in O.S.No.88 of 2012 on the file of the Special Sessions Judge-cum-IV Additional District Judge, Tirupati. No order as to costs. Consequently, the Miscellaneous Petitions pending if any shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:08.09.2017
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