

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Civil Revision Petition No. 2302 of 2017

ORDER:

The 6 petitioners of the present revision were the third parties to the suit O.S.No.31 of 2014 on the file of the II Addl. District Judge, Nalgonda at Suryapet, which suit is filed by the revision respondents No.1 to 4 as plaintiffs against the revision respondents 5 and 6 as defendants. The prayer in this suit O.S.No.31 of 2014 supra was for specific performance of the agreement for sale, dt. 28.03.2014 executed by the revision respondents 5 and 6-the defendants in favour of the revision respondents 1 to 3-plaintiffs therein in respect of residential house standing in the name of said 1st defendant Pandiri Satya Prasad, which he purchased from one Smt. Sunkari Somamma W/ o Kesahaiah of Bapparam village of Nalgonda district under registered sale deed No.3102 of 2013 and the house property is in an extent of 121sq.yards with built up area of 955sq.feet which is covered by part of land in Sy.No.482 of Tirumalagiri village and Mandal of Nalgonda district and the same is already mortgaged by the 1st defendant supra with the 2nd defendant bank S.B.I, Tirumalagiri for 10lakhs, the sale agreement consideration between the 1st defendant and the plaintiffs in O.S.No.31 of 2014 was for Rs.51,01,111/- and the plaintiffs stated paid advance of 25lakhs pursuant to the said agreement, dt. 28.03.2014 also covered by receipt by stipulating to pay balance consideration within 5 months and the title deeds of the property under mortgage with SBH, Tirumalagiri supra be redeemed and released and that the plaintiffs also paid 15lakhs on 21.07.2014 to the 1st defendant who without redeeming the mortgage over the property with the 2nd defendant, is postponing by non-performance of the contract for sale despite legal notice, dt. 25.09.2014 returned unclaimed as left.

2. Among the 6 revision petitioners, the 5th revision petitioner as sole plaintiff filed O.S.No.213 of 2014 against the revision 5th respondent as sole defendant on the file of the Senior civil Judge, Suryapet for the relief of recovery of Rs.2,64,000/- of which 2lakhs principle amount and 64000/- comprising interest of 2%p.a. from 04.06.2013 to suit date 04.09.2014 with the suit claim that the defendant borrowed from the plaintiff said amount of 2 lakhs on 04.06.2013 at Tirumalagiri village and executed demand promissory note to repay with interest at 2%p.a. and also a receipt for the amount received and later despite several demands, the defendant is not choosing to pay and having closed his shop, secretly moving either in the village or staying elsewhere and contemplated to alienate his properties to defraud not only the plaintiff but also other creditors.

3. In this background, 6 revision petitioners, who are the so called creditors of the 1st defendant in O.S.No.31 of 2014 supra wanted to come on record as defendants 3 to 8 in said suit and they filed I.A.No.67 of 2015 saying in view of the above background and also on other facts that the other proposed implead petitioners also filed suits for recovery of amounts due from the 1st defendant of said suit and also some obtained attachment before judgment orders in respect of the property covered by the present suit O.S.No.31 of 2014 for specific performance and there was a settlement through village committee inter se between them on 14.08.2014 by preparing list of total creditors, and to conduct auction of the property and in that private auction one Soma Satyanarayana, Proprietor of Satya Sanitary became the highest bidder of the house property for Rs.60,21,000/- and one Ganji Srinivas, agreed to purchase another open plot of 150sq.yards situated opposite to the Mandal Revenue Officer's office, Tirumalagiri for Rs.5,25,000/- and one

Dr. Kothachalam Hospital, Tirumalagiri village, agreed to purchase another plot of 1st defendant of 178sq.yards situated at Tirumalagiri towards backside of Dr.Kothachalam Hospital, for Rs.2,76,000/- and one G.Krishna Goud agreed to purchase another plot of the 1st defendant of 242sq.yards situated on the back side of the Masjid at Tirumalagiri for Rs.2,42,000/-, and they all approached the 2nd defendant bank of the suit to find out exact loan amount due by the 1st defendant of the suit and when they came to know of the present suit filed by the 4 plaintiffs under the guise of agreement for sale which is set up to evade liability in respect of the amounts due to proposed implead petitioners and that the so called alienation dispute attachment before attachment orders in similar suits in force and the sale agreement is fabricated one to defraud the creditors intended in laying speculative suit claim and they are necessary and proper parties to the suit for effective adjudication.

4. It is pursuant to the said affidavit petition of impleadment the plaintiffs filed counter affidavit of the 1st plaintiff in opposing the same while denying the so called elderly committee sitting or settlement or so called proposed alienations for distribution of amounts etc., and by saying those suits of the proposed parties are at the behest of the brother-in-law of the sole defendant by name Upender to cause wrongful loss to the 4 plaintiffs and they obtained attachment orders suppressing true facts and they are neither necessary nor proper parties to the suit for specific performance. The 1st defendant to the suit as 5th respondent to the implead petition did not file any counter and the 2nd defendant bank even endorsed only a proforma party in the very suit itself. It is from the above and after hearing by the impugned dismissal order dated 04.11.2016, the learned II Addl. District Judge observed that the suit O.S.No.31 of 2014 maintained against two defendants, the 1st defendant

remained exparte, and the 2nd defendant bank is a secured mortgage creditor and the proposed implead petitioners and the plaintiffs with rival contentions are claiming the suits of them respectively are collusive with the 1st defendant. It is also observed that the 4 plaintiffs in the suit filed I.A.No.165 of 2015 before the trial court to direct the 2nd defendant bank not to take recourse under SARFAESI Act, for recovery of the secured mortgage debt due from the 1st defendant to the bank and it was dismissed on 13.04.2015 on contest. Even according to the averments of the proposed parties as defendants 3 to 8 sought for some of them for the amounts due from the 1st defendant to them filed suits and obtained attachment before judgment orders. While referring to some of the expressions ultimately concluded that there is nothing to show that the matter cannot be effectively adjudicated without the presence of the proposed parties as defendants 3 to 8 thereby they are neither necessary nor proper parties to the lis.

5. Impugning the same in the present revision, the grounds urged are that the impugned order is contrary to law, weight of evidence and preponderance of probabilities of the case, and the Court should have been seen that the proposed parties already filed O.S.No.213 of 2014 by P.5 Laxman, O.S.No.184 of 2014 by P.1 Upender, O.S.NO.212 of 2014 by P.4-Satti Reddy, O.S.NO.183 of 2014 by P.2-S.Paji Reddy, O.S.No.227 of 2014 by P.3-S.Bharatamma and O.S.No.214 of 2014 by P.6 Daram Chandra Mohan which are also pending and the suit O.S.No.31 of 2014 for specific performance is by creating agreement collusive outcome between the 4 plaintiffs and the 1st defendant to defraud the proposed parties who already maintained suits for the claims respectively for recovery of amounts and should have been allowed to safeguard the

interest of them so to contest, the said suit and the correctness of the agreement for sale and payment of any amount or entitlement for relief.

6. Even notice ordered to the learned counsel for the parties before the lower Court and shown served, the respondents 1 to 4 the plaintiffs in O.S.No.31/ 14 did not choose to appear leave about the 1st defendant therein (5th respondent).

7. Heard the learned counsel for the petitioner and also perused the material on record by taken as also the respondents 1 to 5 of the revision to decide on merits.

8. Leave about the factual matrix show more than 7 suits are pending of which 6 suits of the proposed parties are for recovery of the amounts and in some of which attachment before judgment orders obtained in relation to the property that also covered by the subject matter of the revision lis of the impleadment sought by them as defendants 3 to 8, the suit O.S.No.31 of 2014 filed by 4 plaintiffs against the debtor defendant pursuant to the so called agreement, leave about if at all the 1st defendant therein became insolvent of having debts more than what assets are to adjudicate otherwise a proper insolvency Court including to question the alienations also covered by agreement for sale if any which is now the subject matter but for one of the arguments raised not necessary thus to consider, so far as the impleadement concerned, the order of the suit for specific performance is limited as to the genuineness of the agreement for sale and payment of any consideration and entitlement to the main relief sought. Though it is the submission of the proposed parties/ revision petitioners is a collusive proceeding and if at all any decree obtained collusively, it effects their rights concerned, the collusive or fraudulent decree as per the settled law no way effects the rights of the non-parties and if they are allowed

to come on record, the area of the lis in support of their claims covered by different lending transactions and its genuineness in dispute also required to be adjudicated. It is not just to widen the scope and as concluded by the lower Court thereby once the suit for specific performance can be disposed of effectively without their presence they are no way necessary parties and in the factual scenario not even to be considered as proper parties though otherwise proper parties to the same extent this Court is not chosen to sit against for nothing illegality but for to say to avoid conflict in judgments and to the effective disposal of the lis covered by all the suits, this court withdraws by this order the suits pending of the revision petitioners in different Courts and makes over to the learned II Addl. District Judge, at Suryapeta to try along with O.S.No.31 of 2014 by clubbing of the suits together for effective and common disposal of the entire lis.

9. Having regard to the above, in the result, the Revision is disposed of as discussed supra. Miscellaneous petitions if any pending in this revision shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 04.07.2017
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