

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NOS.616 AND 683 OF 2017

C O M M O N O R D E R

These civil revision petitions under Article 227 of the Constitution arise out of the common order dated 17.01.2017 passed by the learned II Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, dismissing I.A.Nos.1010 and 1011 of 2016 in O.S.No.455 of 2000. C.R.P.No.616 of 2017 pertains to I.A.Nos.1010 of 2016 while C.R.P.No.683 of 2017 relates to I.A.Nos.1011 of 2016 filed in the suit.

O.S.No.455 of 2000 was originally filed by respondents 1 to 3 herein for a perpetual injunction restraining the five named defendants, respondents 13 to 17 herein, from interfering with the suit A, B and C schedule properties. The A schedule comprised an extent of agricultural land admeasuring Ac.1.23½ guntas in Survey No.180 and Ac.3.09½ guntas in Survey No.187, totaling admeasuring Ac.4.33 guntas in Survey Nos.180 and 187 of Bagh Hayathnagar Village and Mandal, Ranga Reddy District. The B schedule consisted of agricultural land admeasuring Ac.0.32 guntas in Survey No.180 and Ac.1.24½ guntas in Survey No.187, totaling admeasuring Ac.2.16½ guntas in Survey Nos.180 and 187 of Bagh Hayathnagar Village and Mandal, Ranga Reddy District. The C schedule detailed agricultural land admeasuring Ac.0.31½ guntas in Survey No.180 and Ac.1.25 guntas in Survey No.187, totaling admeasuring Ac.2.16½ guntas in Survey Nos.180 and 187 of Bagh Hayathnagar Village and Mandal, Ranga Reddy District. The total extent involved in the suit was therefore Ac.9.26 guntas in Survey Nos.180 and 187 of Bagh Hayathnagar Village and Mandal, Ranga Reddy District.

Upon the death of plaintiffs 1 and 2, their legal representatives were brought on record in the suit and are arrayed as respondents 4 to 11 herein. Though the suit was filed only against five defendants, defendants 6 to 49 got themselves impleaded and are shown as respondents 17 to 60 herein. Upon contest by some of the defendants and adducing of evidence by both sides, the trial Court heard arguments in the suit and posted it for judgment. At this juncture, I.A.No.1010 of 2016 was filed therein by the petitioner herein under Section 151 CPC to reopen the suit for the limited purpose of impleading him as plaintiff 12 in the suit so as to enable him to effectively 'contest' the suit proceedings. He also filed I.A.No.1011 of 2016 in the suit under Order 1 Rule 10(2) CPC seeking impleadment as plaintiff 12 in the suit so as to enable him to effectively 'contest' the suit proceedings. By the common order under revision, the trial Court dismissed both the I.As.

By order dated 10.02.2017 passed in C.R.P.M.P.No.783 of 2017 in C.R.P.No.616 of 2017, this Court granted interim stay of all further proceedings in O.S.No.455 of 2000 on the file of the trial Court. C.R.P.M.P.No.2095 of 2017 was filed by respondent 35 to vacate the above order.

Heard Sri Vedula Venkataramana, learned senior counsel representing Sri P.Sri Harsha Reddy, learned counsel for the petitioner, and Sri Y.Rama Rao, learned counsel appearing for the vacate stay petitioner/respondent 35.

Though Sri Vedula Venkataramana, learned senior counsel, would contend that as all the respondents in the CRPs are yet to be served, it would be premature for this Court to consider the vacate stay petition filed by respondent 35 alone, this Court is of the opinion

that it would not be necessary to await service of notice on all the respondents as a condition precedent to adjudicate the matter once one of the served respondents moves an application to vacate the interim order granted in the case.

Perusal of the record reflects that the claim of the petitioner was that he, along with one G.Venkat Reddy, who is no more, jointly purchased the suit schedule property in O.S.No.455 of 2000 from the plaintiffs in the said suit under two registered sale deeds bearing Document Nos.4814 of 2004 and 4854 of 2004, both dated 24.03.2004. He claimed that they were put in physical possession and enjoyed the suit schedule property since then. He stated that he filed a suit in O.S.No.232 of 2012 before the learned Junior Civil Judge, Hayathnagar, Ranga Reddy District, against the seven named defendants therein for a perpetual injunction restraining them from interfering with his possession and enjoyment of the suit schedule property therein, viz., Ac.4.33 guntas situated in Survey Nos.180 and 187 of Bagh Hayathnagar Village and Mandal, Ranga Reddy District. The seven defendants arrayed in the said suit are respondents 17, 19, 24, 31, 32, 35 and 46 in these revisions. The petitioner further claimed that his vendors did not inform him of the filing of O.S.No.455 of 2000 by them and that they proceeded to prosecute the said suit without disclosing the sale transaction in his favour. He alleged that his vendors were not taking sufficient interest in the present suit and that the defendants were contending that his vendors could not continue the suit as they had parted with possession in his favour and that he came to know about these developments only in the first week of November, 2016. He asserted that he was a proper and necessary party to the suit.

Some of the respondents contested the I.As. by filing their counters. Therein, they stated that the alleged sale transactions in favour of the petitioner and late G.Venkat Reddy were collusive and intended to deprive their rights as genuine purchasers of the plots laid out in the suit schedule property, as per the approved plan, as long back as in the years 1983 to 1986. They further claimed that the entire suit schedule property was converted into plots and they were put in actual physical possession after sale of individual plots in their favour. They pointed out that the petitioner had secured an *ex parte* injunction order in O.S.No.232 of 2012 filed by him, which was thereafter converted into a *status quo* order. Aggrieved thereby, the defendants in O.S.No.232 of 2012 filed C.M.A.No.36 of 2014 before the learned III Additional District Judge, Ranga Reddy District, and the CMA was allowed dismissing the injunction application filed by the petitioner in O.S.No.232 of 2012. They pointed out that in the written statement filed in O.S.No.232 of 2012, the factum of the filing of O.S.No.455 of 2000 was specifically mentioned, but despite the same, the petitioner did not take steps to implead himself in the said suit at that stage. They denied the allegation that the alleged vendors of the petitioner were not taking sufficient interest in the suit and that they, being the defendants, were contending that the vendors could not continue the suit as they had parted with possession in favour of the petitioner. They reiterated that they had been contending right from the beginning that they were in possession of the land by virtue of the sale deeds executed in their favour in respect of the plots laid out in the suit property.

Defendant 44 in the suit filed a separate counter, wherein he alleged that the petitioner and the legal heirs of late G.Venkat Reddy

attended the Court and watched the proceedings in O.S.No.455 of 2000 on each and every date of hearing. He stated that they were also present when arguments were heard in the said suit. He alleged that after the judgment was reserved in the suit, the petitioner suspected that they may get a negative result due to not having possession of the suit schedule property and filed the subject applications. He asserted that the pleadings in O.S.No.455 of 2000 were marked in the year 2012 in O.S.No.232 of 2012 and that the petitioner could not claim ignorance of the pendency of the suit.

No rejoinder was filed by the petitioner to the aforestated counters.

The trial Court took note of the fact that the counter dated 16.08.2013 filed by respondent 6 in the interim injunction application in O.S.No.232 of 2012 clearly mentioned the pendency of O.S.No.455 of 2000 and opined that the claim of the petitioner that he came to know of the said suit **only** in the first week of November, 2016 was a false averment. The trial Court concluded that he had not approached the Court with clean hands. Reference was made by the trial Court to **SARVINDER SINGH V/s. DALIP SINGH**¹, wherein an application for impleadment was dismissed on the ground that the applicant had no explanation for the delay of seven years in seeking such impleadment. The trial Court opined that the petitioner had knowledge of the pendency of O.S.No.455 of 2000 long before November, 2016 but did not choose to take any steps to implead himself in the case till the final arguments were advanced and the matter was posted for judgment. As no proper explanation was offered by the petitioner as to why these applications were filed after

¹ (1996) 5 SCC 539

a delay of more than three years from the date of his knowledge of the pendency of the suit, the trial Court held against him and dismissed the I.As.

Perusal of the affidavits filed in support of both I.As. reflects that they were identical in terms. Therein, the petitioner categorically asserted as under:

I state that my vendors who are the plaintiffs in the suit did not intimate me about the present suit and they have proceeded to continue the suit without disclosing the sale transaction in my favour. Thus I am a person on whom the interest of the suit land has devolved in terms of Order 22 Rule 10 of CPC. I state that my vendors are not taking sufficient interest in the present suit and the defendants are contending that my vendors cannot continue the suit since they have parted with possession in my favour. I came to know about these developments only in the first week of November, 2016. I state that I am seriously interested in and affected by the result of the suit.’

The factum of the pendency of O.S.No.455 of 2000 being disclosed to the petitioner in the course of the suit proceedings in O.S.No.232 of 2012 is not in dispute. A copy of the written statement filed in the said suit is not placed on record, but the trial Court specifically took note of the fact that the counter filed by respondent 6 in the interim injunction application in O.S.No.232 of 2012, as long back as on 16.08.2013, clearly stated so. That apart, the petitioner did not choose to file a rejoinder to the counters filed in the subject I.As. rebutting the averment therein that certified copies of the plaint and written statement in O.S.No.455 of 2000 were marked in O.S.No.232 of 2012 in the year 2012 itself. He also did not choose to rebut the averment that he and the legal heirs of late G.Venkat Reddy attended the Court proceedings in O.S.No.455 of 2000.

The loose language in which the petitioner chose to couch his knowledge/ignorance of the suit proceedings in O.S.No.455 of 2000 clearly demonstrates his lack of *bonafides*. On the one hand, he did not state that he did not know about the suit proceedings in O.S.No.455 of 2000 till November, 2016. He only stated that he came to know about the development, i.e., that his vendors were not taking sufficient interest in O.S.No.455 of 2000 only in the first week of November, 2016. This vague statement on his part clearly shows that the petitioner has no explanation to offer for his somnolence in seeking impleadment in O.S.No.455 of 2000, despite having knowledge of the same at least from August, 2013.

The delay on his part is therefore well over three years and the same remains unexplained even as on date. It is also clear from the prayer of the petitioner that he wishes to have an opportunity to effectively contest (*sic*, prosecute) the suit proceedings in O.S.No.455 of 2000 after being impleaded therein as plaintiff 12. This would mean that the suit, which has already reached the stage of judgment after completion of arguments, would now have to be reopened to enable the petitioner to adduce evidence and also cross-examine the witnesses examined earlier. The ploy of the petitioner to protract the suit proceedings is therefore manifest. Having remained silent for well over three years despite knowing of the pendency of this suit, it is not open to the petitioner to belatedly assert a right to be made a party to this suit so as to turn back the clock. The *malafide* intent of the petitioner is therefore demonstrable. *Ergo*, this Court finds no reason to interfere with the finding of the trial Court that he did not approach the Court with clean hands. His failure to explain the delay in seeking impleadment clearly speaks against him in this regard.

Parties are not entitled to choose their own facts to put forward before the Court. The foundational facts are required to be pleaded enabling the Court to scrutinize the nature and content of the right alleged to have been violated. (**RAJ KUMAR SONI V/s. STATE OF U.P.²**).

In the light of this settled position, failure of the petitioner in disclosing his knowledge of the pendency of the suit and in vaguely referring to his having come to know of the 'developments therein' only in the first week of November, 2016 clearly disentitles him from seeking impleadment in the suit at this late stage.

On the above analysis, this Court finds that the trial Court committed no error in dismissing the subject I.As. filed by the petitioner. No ground is therefore made out for interference with the orders under revision.

The civil revision petitions are accordingly dismissed. Interim order dated 10.02.2017 in C.R.P.M.P.No.783 of 2017 in C.R.P.No.616 of 2017 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

9th JUNE, 2017

Svv

² (2007) 10 SCC 635