

**HON'BLE SRI JUSTICE M. SEETHARAMA MURTI**

**CIVIL REVISION PETITION No.2982 of 2016**

**ORDER:**

This is a revision, under Article 227 of the Constitution of India, by the unsuccessful plaintiff/respondent in A.S.No.50 of 2010 on the file of the Court of learned VII Additional District Judge, Madanapalle, assailing the orders, dated 28.03.2016, of the said learned Judge passed in I.A.No.193 of 2015 in A.S.No.50 of 2010 filed by the 3<sup>rd</sup> party/1<sup>st</sup> respondent herein under Sections 151 read with Section 94(e) of the Code of Civil Procedure, 1908, for permission to implead the said third party as 2<sup>nd</sup> appellant in the above appeal to enable him to prosecute the appeal in the interest of justice.

I have heard the submissions of Sri R.N.Hemendranath Reddy, learned counsel for revision petitioner/plaintiff and of Sri N.Pramod, learned counsel for respondent No.1/impleaded 3<sup>rd</sup> party. There is no representation for respondent No.2/appellant/sole defendant in the suit.

I have perused the material record.

The facts as could be culled out from the material record and as per the submissions of the learned counsel for both sides, in brief, are as follows: “The plaintiff brought the suit against the sole defendant for specific performance of an agreement to sell dated 31.08.2004; the sole defendant (second respondent herein) filed a written statement and resisted the suit; during the pendency of the suit, the third party, that is, the first respondent herein, purchased the suit schedule property from the sole defendant under registered sale deed dated 10.02.2005. Therefore, the plaintiff filed a petition in I.A.No.152 of 2005 before the trial Court to implead the 1<sup>st</sup> respondent/third party as a party defendant to the suit. However, the said application was resisted by the very third party and the said petition was dismissed

by the trial Court, on 02.01.2006. Thereafter, the suit was tried; and, ultimately the suit was decreed in favour of the plaintiff and against the sole defendant. The sole defendant preferred the aforementioned first appeal. In the said first appeal, which is pending before the 1<sup>st</sup> appellate Court, the third party purchaser, who had earlier resisted for his impleadment as a co-defendant in the suit, filed the subject interlocutory application for his impleadment as 2<sup>nd</sup> appellant in the said first appeal suit filed by the sole defendant, to enable him to prosecute the appeal effectively, *inter alia*, contending that if the sole defendant, who preferred the appeal, fails to prosecute the appeal sincerely and effectively, the ultimate sufferer would be the 3<sup>rd</sup> party, who purchased the property during the pendency of the suit. That application was resisted by the plaintiff/respondent in the first appeal suit *inter alia* contending that the third party had earlier resisted the attempt made by the plaintiff during the pendency of the suit to implead him and that after the suit is decreed in favour of the plaintiff, the present attempt is being made by him (3<sup>rd</sup> party) to come on record as 2<sup>nd</sup> appellant and that in view of the orders of the trial Court that the third party need not be impleaded as a party to the *lis*, the 3<sup>rd</sup> party is not entitled to be impleaded as a party/2<sup>nd</sup> appellant in the first appeal suit.”

By the orders impugned in this revision and on merits, the 1<sup>st</sup> appellate Court allowed the petition of the 3<sup>rd</sup> party-purchaser. The aggrieved plaintiff is therefore, before this Court.

The learned counsel for plaintiff would submit that in the facts and circumstances of the case, if the proposed party, who purchased the suit schedule property during the pendency of the suit from the sole defendant, is to be impleaded, it would delay the hearing and disposal of the appeal suit and that the 3<sup>rd</sup> party being a purchaser from the sole defendant, who suffered a decree, is bound by the judgment and decree of the trial Court and that the 3<sup>rd</sup> party, who

purchased the property during the pendency of the suit, has no *locus standi* to come on record and that the petition is filed with an ulterior motive. *Per contra*, the learned counsel for the third party, while supporting the orders of the 1<sup>st</sup> appellate Court, which are impugned in this revision, contend that his presence is necessary being a subsequent purchaser of the suit property to enable him to effectively prosecute the appeal as he has acquired right, title and interest in the suit property during the pendency of the suit.

During the course of arguments, the learned counsel for third party, that is, the proposed 2<sup>nd</sup> appellant, submitted that the proposed party undertakes not to file any additional pleadings and also not to adduce any further evidence either by recalling the witnesses already examined for cross-examination on his behalf or by examining himself or other witnesses on his side and that he would be satisfied if the appeal is decided by the 1<sup>st</sup> appellate Court in his presence by allowing him to prosecute the appeal along with the 1<sup>st</sup> appellant/sole defendant and that therefore, the 3<sup>rd</sup> party/proposed 2<sup>nd</sup> appellant is prepared to file an undertaking affidavit accordingly before the Court below.

Having regard to the facts and submissions, this Court is satisfied that if an opportunity is given to the third party/subsequent purchaser of the suit schedule property by permitting his impleadment as 2<sup>nd</sup> appellant in the appeal suit pending before the 1<sup>st</sup> appellate Court, the dispute can be given a quietus in the presence of the parties interested in the *lis* and that such a course would subserve the ends of justice, and therefore, the order impugned in this revision, passed by the 1<sup>st</sup> appellate Court is justified and does not brook interference, more particularly, in view of the undertaking given by the third party/proposed 2<sup>nd</sup> appellant, which is stated *supra*.

Recording the undertaking, the revision petition is dismissed accordingly. While accordingly dismissing the revision, it is made clear that the proposed 2<sup>nd</sup> appellant shall file an undertaking affidavit as undertaken before this Court and as recorded supra, before the 1<sup>st</sup> appellate Court within two weeks from the date of receipt of a copy of this order. Only on filing of such an undertaking affidavit, the appellate Court shall permit the amendment of the memorandum of grounds of appeal pursuant to these orders and permit the proposed 2<sup>nd</sup> appellant thereafter, to prosecute the appeal. On failure to file the undertaking affidavit as directed above, the proposed 2<sup>nd</sup> appellant/3<sup>rd</sup> party shall be precluded from getting himself impleaded as a party 2<sup>nd</sup> appellant to the appeal suit and prosecuting the appeal and his application for his impleadment shall stand dismissed.

No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

2<sup>nd</sup> January 2017

ajr

**M. SEETHARAMA MURTI, J**

