

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CIVIL REVISION PETITION No.725 of 2017

ORDER:

This Civil Revision Petition is filed by the petitioner, under Article 227 of the Constitution of India, aggrieved by the order, dated 23.11.2016, passed in I.A.No.687 of 2016 in O.S.No.989 of 2014, on the file of the I Additional Senior Civil Judge, Kakinada.

2. Heard and perused the entire material available on record.

3. The petitioner-third party filed I.A.No.687 of 2017 in O.S.No.989 of 2014 before the I Additional Senior Civil Judge, Kakinada, under Order 1 Rule 10 read with Section 151 of the Civil Procedure Code, praying to implead him as second defendant in the suit on the premise that the defendant entered into an agreement of sale with him on 13.09.2014 agreeing to sell the schedule property and thereby he is having an interest over the schedule property being the purchaser/agreement holder of schedule property, whereby the learned trial Judge dismissed the said I.A. by observing as follows:

“6. Further more, for maintaining the petition under Rule.10 of Or.1 of Code of Civil Procedure, the proposed party must have an interest over the property in dispute and the object of adding a party is to avoid needless multiplicity of suits. Basically and fundamentally it shall be borne in mind that for maintaining a petition like this that no effective adjudication could be made and no effective decree could be passed in the absence of a proposed party. In this connection, it is pertinent to note that in a suit for recovery of amount based on mortgage, the purchase of

mortgaged property under an agreement of sale is neither proper nor necessary party to the suit. For that matter being an agreement holder by virtue of alleged agreement of sale, no effective title passes to him over the schedule property. As such it is apparent on the face of the record that the petition is ill-motivated. No effective adjudication of dispute involved in this suit filed for recovery of amount from the defendant by the plaintiff, impleading a third party who claims to be purchaser of schedule property under an agreement of sale is absolutely inconsequential. Even without absence of third party petitioner, an effective adjudication could be made in a suit and as such the petition is devoid of merits and is intended to abuse of process of law. Accordingly, the point is answered.”

4. Learned counsel for the petitioner contended that the present suit i.e., O.S.No.989 of 2014 is a collusive suit got filed by the 2nd respondent with an intention to defeat the petitioner’s suit for specific performance and that the trial Judge has dismissed the I.A.No.687 of 2016 even without issuing notice to the other side and prayed to allow the civil revision petition by setting aside the impugned order.

5. Considering the facts and circumstances of the case, this Court is of the view that without impleading the petitioner herein, the suit between the first and second respondents can be disposed of since the relief sought in the suit filed by the first respondent is totally different from the relief sought by the petitioner in a suit for specific performance. Hence, the observation made by the trial Judge is in accordance with law and there is no need to interfere with the impugned order. Hence, the civil revision petition is liable to be dismissed.

6. Accordingly, the Civil Revision Petition is dismissed.
There shall be no order as to costs. Miscellaneous Petitions, if
any, pending in the civil revision petition shall stand closed.

RAJA ELANGO,J

Date: 6th April, 2017

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