

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.4450 OF 2016

ORDER:

This petition is preferred under Article 227 of the Constitution of India, by the petitioner herein/7th respondent, challenging the order in I.A.No.2342 of 2013 in O.S.No.653 of 2012 dated 26.02.2015 passed by the II Additional Chief Judge, City Civil Court at Hyderabad, allowing the application filed under Order 1 Rule 10 r/w Section 151 C.P.C impelading the proposed respondents as defendants 6 & 7 in the suit and for consequential amendment, the Trial Court observed that, as the respondents 1 & 3 failed to file counter and since notice could not be served on respondent no.7, publication was ordered and inspite of publication, respondent no.7 remained absent and was set exparte and held that the petitioner has filed the suit against the defendants 1 to 5 seeking the relief of declaration and possession of the petitioner, while the suit is pending, the respondents 3 & 4 sold the property to respondent no.6 under the registered sale deed dated 13.09.2012 and the respondent no.6 in turn sold the same property to respondent no.7 under the agreement of sale-cum-general power of attorney dated 01.11.2012, the respondents 6 & 7 are proper and necessary parties to be impleaded as defendants 6 & 7 in the suit and accordingly allowed the petition.

The main contention of the learned counsel for the petitioner before this Court is that the schedule of property which he purchased is different from the schedule of property shown in the

schedule annexed to the plaint and he developed the property and sold flats to various purchasers and therefore, he is neither proper nor necessary party to the suit for adjudication of the real dispute between the parties. But the Trial Court did not consider the necessity to implead him as a party and committed an error in allowing the petition.

Learned counsel for the petitioner while reiterating the arguments, contended that no notice was served on the petitioner herein/7th respondent in the interlocutory application and thereby, the order is vitiated by irregularity and prayed to set-aside the same.

Whereas, Sri K. Mohan Rami Reddy, learned counsel for the respondents supported the order of the Trial Court while drawing attention of this Court to Item No.2 of schedule of the plaint and the schedule of property covered by agreement-cum-general power of attorney to establish that the property is one and the same and prayed to dismiss the petition.

The present civil revision petition is filed on two grounds. The first ground is that the schedule property annexed to the plaint is different from the property the petitioner allegedly purchased. Item No.2 of schedule property of 'B Schedule' is as follows:

"Plot Nos.33 & 42:

North: Plot Nos.34 & 41 (as per the Layout of the 1st defendant)

South: 40 feet Road (as per the Layout of the 1st defendant)

East: 40 feet Road

West: 40 feet Road"

Whereas, the petitioner purchased “A & B Schedule” properties under agreement of sale-cum-general power of attorney which is as follows:

“All that the Open Plot nos.33 & 42, in Survey No.322 & 323, admeasuring 706 Sq.yds., equivalent to 590.21 Sq.mts., situated at Shaikpet Village and Mandal, Hyderabad-A.P., with in the Municipal Ward No.8, Block No.1, and founded as under:

NORTH: Plot No.s 34 & 41
SOUTH: 33 Feet Wide Road
EAST : 40 Feet Wide Road
WEST : 40 Feet Wide Road”

On close perusal of the items 1 & 2 of the property in the schedule annexed to the plaint, the property purchased under the agreement of sale-cum-general power of attorney is one and the same, except width of the road on southern side. But, according to the petitioner, there is a variation in the survey number, plot numbers etc. But, that cannot be decided at this stage, since the boundaries will prevail over the extent.

The suit was filed for declaration of title and recovery of possession and the petitioner herein admittedly purchased the property under the agreement of sale-cum-general power of attorney, which created the interest in the property, in view of Section 202 of Indian Contract Act, which is irrevocable, it is agency coupled with interest. Though the petitioner herein sold the property after development to third parties, still he is a proper and necessary party, since in his absence the said claim cannot be adjudicated effectively. Therefore, the Trial Court did commit any error in ordering the petition on the ground that the petitioner

herein purchased the property under the registered agreement-cum-general power of attorney.

The other contention raised by the learned counsel for the petitioner is that, no notice was served before passing an order. A bare look at the order, a notice was ordered, but, it could not be served personally and later on, notice by substituted service was ordered and accordingly, published in newspaper and it is sufficient within Order V Rule 20 C.P.C and held that the service of notice was sufficient. Therefore, it is not a ground to set-aside or reverse the order of the Trial Court. Hence, I do not find any infirmity in the order passed by the Trial Court to interfere, exercising power under Article 227 of the Constitution of India, which is supervisory in nature and consequently, the petition is liable to be dismissed, as it is devoid of merits.

In the result, the civil revision petition is dismissed, confirming the order in I.A.No.2342 of 2013 in O.S.No.653 of 2012 dated 26.02.2015 passed by the II Additional Chief Judge, City Civil Court at Hyderabad

Consequently, miscellaneous petitions pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:05.07.2017

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