

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.5004 OF 2017

ORDER:

The Order dated 13.09.2017 passed by the learned District Judge, Anantapuramu, dismissing I.A.No.1215 of 2017 in O.S.No.36 of 2009, filed under Order I Rule 10 C.P.C. to strike off plaintiffs 2 to 4 and add them as defendants 10 to 12 in the suit, is challenged before this Court.

2. It is the case of the petitioner-plaintiff that he along with respondents 10 to 12-Plaintiffs 2 to 4 had entered into an agreement of sale with respondents 1 to 9 herein on 01.02.2009 to purchase the suit schedule property. As respondents 1 to 9 failed to honour their commitment, the petitioner along with respondents 10 to 12 has instituted O.S.No.36 of 2009 seeking specific performance of agreement of sale dated 01.02.2009. After filing of the suit respondents 10 to 12 started non-cooperation. In the process they engaged different advocate. As there is every likelihood of the respondents not contributing their share of money to protect his interest, petitioner filed I.A.No.1215 of 2017 seeking to transpose the plaintiffs 2 to 4. The Court below, without appreciating the damage that may be caused to the petitioner and without taking into consideration of the specific terms of agreement under Ex.A.8, had dismissed the I.A. Hence, the Civil Revision Petition.

3. Heard the learned counsel for the petitioner and perused the order under revision.

4. The facts are not in dispute. The entire grievance of the petitioner, as can be seen, is that there is non-cooperation on the part of respondents 10 to 12, who are co-plaintiffs in the suit, on account of which the entire suit is likely to be defeated. Further, it is his case that under Ex.A8, which is *inter se* agreement among plaintiffs 1 and 2 to 4, there was a delineation of amounts that are required to be contributed by the respective parties and now on account of the non-cooperation of respondents 10 to 12, there is no other choice for the petitioner except to treat them as hostile and add them as defendants. In those circumstances, the Court ought not to have dismissed the Application filed for transposing plaintiffs 2 to 4 by striking off their names as plaintiffs and add them as defendants 10 to 12.

5. At the outset, it may be noted that Order I Rule 10 C.P.C. has no application to the facts on hand. Rule 10 is applicable where the suit is instituted in the name of a wrong person. While Rule 10 (1) gives power to the Court to examine and allow either adding of any other person by substitution or otherwise add as plaintiffs, sub-rule (2) gives power to the Court to strike out or add parties. The crucial thing, which needs to be considered for exercising the power under Order 1 Rule 10 is that the Court should be satisfied that such exercise of power is warranted and the same is necessary for the determination of the *lis*.

6. In the present case, the suit is filed seeking specific performance of agreement of sale dated 01.02.2009 by the petitioner and respondents 10 to 12 as plaintiffs. The Court below had recorded a finding that there is no need for the Court to come

to conclusion that plaintiffs 2 to 4 are hostile to the plaintiff or they have taken any steps to defeat the interests of the plaintiff, and that mere non-participation in the suit proceedings by a party cannot, by itself, be construed to be hostile to the other plaintiffs. Apart from that, non-cooperation of other plaintiffs, in terms of Ex.A8, can hardly be a reason for transposing them as the defendants. In the present case, the suit is not filed for seeking enforcement of *inter se* agreement under Ex.A8, dated 03.04.2009. In fact, the agreement sought to be enforced is the registered agreement of sale, dated 01.02.2009 and not agreement dated 03.04.2009.

7. In those circumstances, the trial court while disposing of the matter gave reasons as under –

“6. As seen from the facts of the present case, this is a suit for specific performance filed by four plaintiffs basing on an agreement of sale entered with the defendants. The first plaintiff/petitioner herein had examined himself as P.W.1. The other plaintiff though had appeared, to reject the settlement proposal, have not adduced any evidence. As seen from the record, they are now not evincing any interest and have refused notice and are not appearing in the case. Be that as it may, there is no material on record except for the averments in the petitioner/affidavit that they are actively sabotaging the suit. In fact, though the plaintiffs have engaged separate counsel they had not cross-examined plaintiff No.1 nor have they set up a different case to the detriment of plaintiff NO.1. They may not be actively participating in the prosecution of the case, but ultimately if the suit is decreed all of them have to pay the sale consideration to the defendants to obtain the sale deed. Even if they do not do so, then plaintiff No.1 will not be deprived of the fruits of the decree. Further, if the other plaintiffs do not perform their part of the agreement, plaintiff No.1 can perform the obligations

and later compel them to contribute or take the fruits of decree in entirety to the exclusion of the rest. This cannot be a ground for making them as defendants for the reason that irrespective of plaintiffs made as defendants, all of them have to perform their obligations under the suit agreement and as seen from the record they are not disputing the claims of the plaintiff No.1 in respect of the suit schedule property nor or they separating any case contrary to the case pleaded in the plaint. Therefore, there is no necessity of transposing the plaintiffs 2 to 4 as defendants in the suit.”

8. The above reasoning of the trial Court cannot be found fault with and there being no error apparent on the face of the record warranting exercise of revisionary jurisdiction under Article 227 of the Constitution of India, the Civil Revision Petition does not merit any consideration and accordingly, it is dismissed. There shall be no order as to costs.

9. Miscellaneous petitions pending, if any, shall also stand dismissed.

CHALLA KODANDA RAM, J

Dated:08.12.2017.

Ssv