

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.3492 OF 2013

ORDER:

This petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.1055 of 2008 in O.S.No.772 of 2005 dated 03.06.2013, filed under Order I Rule 10 of C.P.C, whereby the Trial Court dismissed the application declining to implead respondents 2 and 3 as parties defendants to O.S.No.772 of 2005 filed for recovery of amount, based on promissory note, on the ground that they are neither proper and necessary parties to the suit filed on the foot of promissory note.

It is the case of the petitioner that the petitioner filed suit for recovery of amount based on promissory note and filed another application I.A.No.77 of 2005 under Order XXXVIII Rule 5 C.P.C for ordering attachment of the property before judgment and accordingly attachment of the property was ordered on 27.06.2005. After effecting attachment, the first respondent/owner of the property executed registered sale deed dated 29.06.2005 in favour of the respondents 2 & 3 i.e. the proposed parties. Therefore, they acquired right and title to the property and sought to be impleaded as they are proper and necessary parties to the suit.

The respondents 2 & 3 filed counter affidavit, denying material allegations, mainly contending that they are neither proper nor necessary parties to the suit, and they are third parties

to the suit transaction, which is based on promissory note and prayed for dismissal of the petition.

The Trial Court after hearing both the counsel, held that respondents 2 & 3 are not necessary parties, since they are unconnected with the suit transaction and dismissed the I.A.No.1055 of 2008.

During hearing, the learned counsel for the petitioner contended that since he purchased the property and sale is conditional sale, as the purchasers/respondents 2 & 3 retained Rs.10,00,000/- out of the sale consideration, agreed to be paid under registered sale deed dated 29.06.2005 and in such case, they are proper and necessary parties to the suit and in their absence, the claim of the petitioner/plaintiff cannot be adjudicated effectively and prayed to set-aside the order in I.A.No.1055 of 2008.

Learned counsel for the respondents while reiterating the contentions informed this Court that the suit itself was dismissed for default on 01.10.2013. But, the learned counsel for the respondents stated that an application is allegedly filed for restoration of suit and the same is pending.

Undisputedly, O.S.,No.772 of 2005 was filed on the foot of promissory note and the transaction was between the petitioner and first respondent, attachment of property was under Order XXXVIII Rule 5 C.P.C dated 27.06.2005 is also not in dispute, including conditional sale of the property. But, sale of the property is only subject to attachment, since the attachment was already

effected by execution of the decree and when the attachment is subsisting, it need not be reattached in execution of the decree and purchase of property by respondents 2 & 3 is only subject to attachment and such sale would not defeat the right of the petitioner/plaintiff.

Section 64 C.P.C deals with private alienation of property after attachment to be void. Clause (1) of Section 64 says, where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgement-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment. If, for any reason, suit is restored, Order XXXVIII Rule 11-A(2) of C.P.C would apply.

In view of Section 64(1) C.P.C, the sale which is private alienation is void as against the claimants of the petitioner.

The respondents 2 & 3 are neither proper nor necessary parties to the suit, since the plaintiff and first defendant i.e. petitioner and the first respondent are the promissor and promisee to the promissory note, which is the document sued upon and there is no contractual obligation between the respondents 2 & 3 and the petitioner before this Court. Even in their absence, the suit claim can be adjudicated effectively. Therefore, respondents 2 & 3 are not necessary parties.

Hence, the civil revision petition is dismissed. However, the petitioner is entitled to claim protection under Section 64(1) C.P.C, subject to Order XXXVIII Rule 11-A(2) of C.P.C.

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

JUSTICE M. SATYANARAYANA MURTHY

Date:04.07.2017

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