

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1261 of 2017

ORDER:

This Civil Revision Petition under Article 227 of Constitution of India is filed challenging the Order dt.30.12.2016 in I.A.No.751 of 2014 in O.S.No.218 of 2013 passed by the I Addl.District Judge, Nellore dismissing the application filed under Order I Rule 10 r/w 151 CPC and Rule 28 of Civil Rules of Practice to implead the proposed parties as defendant Nos.3 to 6 and allow the consequential amendment.

2. The petitioners filed an application under Order I Rule 10 of CPC contending that the suit is filed for declaration that sale deed dt.22.08.1979 bearing No.1234/1979 and sale deed dt.22.08.1979 bearing No.1244/1979 are null and void, not binding on the plaintiffs and to cancel the said documents and for consequential permanent injunction and that the defendants 1 and 2 remained *ex parte* as they are not interested in the suit claim as they already sold the property under agreement of sale dt.28.10.1985 and delivered possession on the same day to the father of the petitioners i.e. Jyothi Bujjaiah on receipt of sale consideration. The said Jyothi Bujjaiah was in possession during his life time since the date of purchase under agreement of sale and paying land revenue to the authorities concerned and that he obtained pattadar passbook and title deed under R.O.R. proceedings, but died on 19.10.1999 leaving the petitioners as his legal heirs to succeed the estate and since then the first petitioner is managing the entire family as Kartha and continued in possession and enjoyment and that their possession was recognized as transfer, thereby entitled to come on record as parties to the suit as defendants in the main suit and in their absence, the suit cannot be decided effectively.

3. The respondents 20 and 21 filed counter supporting the case of the petitioners; whereas the respondents 1 to 19 disputed the alleged agreement of sale dt.28.10.1985 contending that it is not valid in the eye of law and the petitioners cannot take possession of the property merely on the guise of unregistered document and the document is compulsorily registerable and thereby the document will not create any interest in the immovable property. Therefore, the petitioners are neither proper nor necessary parties to the suit and thereby not entitled to come on record and prayed for dismissal of the petition.

4. Upon hearing argument of both the counsel, the trial court held that the petitioners have to establish their prima facie right or interest in the subject matter of the suit and in the absence of prima facie interest or right in the property, the petitioners are not entitled to come on record and when the plaintiffs filed the suit against the defendants 1 and 2 to declare that the sale deeds are null and void, the question of effecting the transfer of property covered by those documents does not arise, even otherwise if any agreement is executed, in the main suit, the petitioners cannot be permitted to come on record as defendant Nos .3 to 6 in the suit and dismissed the petition.

5. Aggrieved by the order passed by the trial Court in I.A.No.751 of 2014, the present revision is filed on various grounds, mainly, contending that the petitioners are in possession and enjoyment of the property having obtained pattadar pass book and title deed and mutated their names in 1B register and adangal during the life time of Jyothi Bujjaiah, father of the petitioners and after the death of Jyothi Bujjaiah, the petitioners' names are also mutated in the revenue records of the village. Therefore, the petitioners are entitled to implead as defendants 3 to 6 in suit proceedings as proper and necessary parties whose rights will be

affected in case the suit is decreed against the defendants 1 and 2 directly.

6. During hearing, on behalf of Sri J.Pradeep Kiran, learned counsel for the petitioners Sri Botla Venkateswar Rao contended that the order of the trial court is illegal for the reason that the transfer is only under an agreement of sale. But, the trial court did not consider this plea in proper perspective, so also the pattadar passbook and title deeds issued under R.O.R. Act. Finally, the counsel requested to allow this petition setting aside the impugned order passed by the trial Court.

7. None represented despite printing the name of Sri M.Prabhaker, counsel for the respondents who filed vakalat and thereby recorded the argument as null.

8. According to the petitioners, their father purchased the property under possessory agreement of sale in the year 1985 and he continued in possession and enjoyment of property during his life time and thereafter, the petitioners allegedly succeeded the estate of Jyothi Bujjaiah, father of the petitioners and continuing in possession and enjoyment of the property. Still, he contended that the petitioners are proper and necessary parties to the suit since the suit is filed for declaration and title, that the plaintiffs are absolute owners and that the suit is filed for declaration that sale deed dt.22.08.1979 bearing No.1234/1979 and sale deed dt.22.08.1979 bearing No.1244/1979 are null and void, not binding on the plaintiffs and to cancel the said documents and for possession also. Therefore, the petitioners are claiming to be in possession in pursuance of the agreement of sale through their father as proper and necessary parties and in support of their contention, they placed reliance on judgment of Apex Court in RAMESH HIRANAND KUNDANMAL v.

MUNICIPAL CORPORATION OF GREATER BOMBAY AND OTHERS¹ wherein the Apex Court had an occasion to deal with an identical issue and held that lessee in occupation of the premises is a proper and necessary party to the suit and permitted to implead the lessee under Order I Rule 10 of CPC. The learned counsel also relied on another judgment of Allahabad High Court reported in SMT. SHAIL KUMARI AND OTHERS v. SMT. ASHA SRIVASTAVA AND OTHERS².

9. Undoubtedly the suit is filed for various reliefs stated above, but one of the relief is declaration of title and recovery of possession and court fee also paid thereon for recovery of possession also, since plaintiffs were out of possession and the petitioners are claiming to be in possession of the property and produced certain documents like adangals to support their contention prima facie that they are in possession and enjoyment of the property, thereby the persons in possession must be impleaded as party to the suit for recovery of possession and if any order or decree is passed in their absence, it would certainly lead to multiplicity of proceedings and therefore, the petitioners are the necessary parties, according to their contention. Who is proper and necessary party under Order I Rule 10(2) CPC decided by the Apex Court in RAZIA BEGUM v. SAHEBZADI ANWAR BEGUM AND OTHERS³ while dealing with Order I Rule 10 (2) CPC it is held as under:

"Order I Rule 10(2), C.P.C. confers wide discretion to the Court to meet every case of defect of parties but is subject to two limitations, viz., (1) that the Court has no power to join a person as a party if he could not have been originally impleaded under O.I Rule 1 or R.3 C.P.C. and (2) that the presence of the person added must be necessary to effectually and completely adjudicate upon and settle all

¹ 1992 SCC (2) 524

² AIR 2005 All 35

³ AIR 1958 SC 886

points involved in the suit if persons who are sought to be impleaded have no subsisting right over the properties and they are sought to be impleaded only for the purpose of getting their evidence, and it would not be proper to make them parties to the suit and that the petitioner's apprehension that they would be driven to the necessity of filing a separate suit against these persons is not a sufficient justification to compel the plaintiff to implead them as parties to the suit."

10. In the later judgment of Madras High Court reported in *Firm of Mahadeva Rice and Oil Mills Vs Chennimalai Gounder*⁴ laid down certain guidelines to exercise power under O. 1, R. 10 of C.P.C. and they are as under:

"(1) If, for the adjudication of the "real controversy" between the parties on record, the presence of a third party is necessary, then he can be impleaded; (2) It is imperative to note that by such impleading of the proposed party, all controversies arising in the suit and all issues arising thereunder may be finally determined and set at rest, thereby avoiding multiplicity of suits over a subject-matter which could still have been decided in the pending suit itself; (3) The proposed party must have a defined, subsisting, direct and substantive interest in the litigation which interest is either legal or equitable and which right is cognisable in law; (4) Meticulous care should be taken to avoid the adding of a party when the addition is intended merely as a ruse to ventilate certain other grievances of one or the other of the parties on record which is neither necessary or expedient to be considered by the Court in the pending litigation; and (5) It should always be remembered that considerable prejudice would be caused to the opposite party when irrelevant matters are allowed to be considered by Courts by adding a new party whose interest has no nexus to the subject-matter of the suit."

11. In view of the principles laid down by Apex Court and tests laid down by Madras High Court, the proposed parties must have direct interest in the subject matter of the suit to come on record.

⁴ AIR 1968 Mad 287

12. The petitioners may be proper parties, not necessary parties, but still to come on record in whose absence the lis pending before the Court cannot be adjudicated finally. However, their impleadment as party would not confer any title or right in the immovable property without obtaining any regular sale deed from the defendants 1 and 2 and the finding recorded by the trial court against the defendants 1 and 2 after full-fledged trial is binding on the defendants and are not entitled to raise any specific plea except with regard to possession based on agreement of sale. Hence, I find that the petitioners are proper parties though not necessary parties, but the trial court did not consider the effect of possessory agreement of sale allegedly obtained by their father Jyothi Bujjaiah in the year 1985 and continuing in possession and enjoyment of the property since then, allegedly. Therefore, the order is contrary to the principles laid down by the Apex Court in RAMESH HIRANAND KUNDANMAL 1st cited supra. Hence, the petitioners are permitted to come on record as defendants 3 to 6, but their right is subject to the rights of the defendants 1 and 2.

13. In the result, the revision petition is allowed setting aside the order dt.30.12.2016 in I.A.No.751 of 2014 in O.S.No.218 of 2013 passed by the I Addl.District Judge, Nellore. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Date:21-07-2017
Ccm

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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