

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION Nos. 1340 and 2198 of 2017

COMMON ORDER:

Civil Revision Petition No.1340 of 2017 is filed against the order and decree dated 14.02.2017 passed in I.A.No.7 of 2017 in O.S.No.215 of 2008 by the Junior Civil Judge, Srungavarapukota (for short, 'the trial Court'). Civil Revision Petition No.2198 of 2017 is filed against the order and decree dated 14.02.2017 passed in I.A.No.255 of 2016 in O.S.No.161 of 2008, by the trial Court. Since these civil revision petitions involve a common subject matter pertaining to the impleadment of a third party in the suit proceedings, they are heard together and are being disposed of by this common order. For the sake of convenience, the rank of parties in O.S.No.161 of 2008 is adopted throughout this common order.

2. In a nutshell, the facts of the case are as follows:

O.S.No.161 of 2008 is filed by one Mudunuru Srinivasa Varma (the plaintiff), against one Kattamuri Ratnavathi (the 1st defendant) and Ayinala Ramana Kumari (the 2nd defendant), seeking permanent injunction and to restrain the defendants from interfering with his peaceful possession and enjoyment of property in Ac.0-12 cents in Survey No.545/5 of Block-I of Srungavarapukota. The case of the plaintiff is that he purchased the plaint schedule property from Bugatha Satyanarayana @ Suri Babu and his sons Lakshmanarao @ Pothuraju, under a registered Agreement of Sale-cum-Power of Attorney, and since then he is in peaceful possession and enjoyment of the property, and that the defendants are making efforts to encroach his property and,

therefore, prayed to grant permanent injunction against the defendants.

A cross suit in O.S.No.215 of 2008 is filed by Kattamuri Ratnavathi (the 1st defendant in O.S.No.161 of 2008) against Mudunuru Srinivasa Varma (the plaintiff in O.S.No.161 of 2008) stating that she is the absolute owner of Ac.0-87 cents of land, which includes the suit schedule property of Ac.0-12 cents, having purchased the same from Bugatha Sanyasi and his son Suri Babu under a registered sale deed dated 11.04.1980, and since then the she is in peaceful possession and enjoyment of the property of Ac.0-87 cents and, out of the said property, she settled an extent of Ac.0-29 cents in favour of her daughter who is the 2nd defendant. Both the parties adduced evidence. The trial Court, by order dated 21.06.2013, decreed the suit O.S.No.161 of 2008 filed by the plaintiff; and, by order dated 21.06.2013, dismissed the suit O.S.No.215 of 2008 filed by the defendants. Aggrieved by the order dated 21.06.2013, dismissing her suit O.S.No.215 of 2008, the 1st defendant filed appeal in A.S.No.71 of 2013; and aggrieved by the order and decree 21.06.2013 passed in O.S.No.161 of 2008, she filed A.S.No.72 of 2013 before the 1st appellate Court.

The 1st appellate Court placed reliance in **Smt. Rebti Devi v. Kam Dutt and another**¹, wherein it was held that *when both sides lead evidence, the question of burden of proof pales into insignificance*, and, therefore, set aside the orders dated 21.06.2013 passed by the trial Court in O.S.No.161 of 2008 and O.S.No.215 of 2008 and remanded the matters back to the trial Court with a direction to dispose of the same within six months after giving fair opportunity to both the parties to adduce evidence.

¹ 1998 (1) APLJ 37 (SC)

While so, before the trial Court, the 1st defendant filed I.A.No.255 of 2016 in O.S.No.161 of 2008, seeking to implead one Piridi Simhachalam as 3rd defendant in the suit, stating that she sold the suit schedule property to him during pendency of appeal before the 1st appellate Court, and therefore, the proposed 3rd defendant is a proper and necessary party to the suit. The proposed 3rd defendant-Piridi Simhachalam has also filed I.A.No.7 of 2017 in O.S.No.215 of 2008 seeking to come on record as 2nd plaintiff in the said suit, stating that he had purchased the suit schedule property from the 1st defendant and, therefore, he stepped into the shoes of the 1st defendant and hence he may be permitted to come on record as 2nd plaintiff in O.S.No.215 of 2008 and contest the suit.

The trial Court, on consideration of the decisions relied upon by the learned counsel for the petitioner, in the case of **Major P.T. Choudary v. Mohammed Abdul Basheer Khan², Thummalachetty Builders and Developers (Pvt.) Ltd., Hyderabad v. Commissioner and Inspector General of Stamps and Registration, Hyderabad³, Putturu Vishnu Kumar v. Rudraraju Satyanarayana Raju⁴**; and the decisions relied upon by the learned counsel for the 1st defendant, in the case of **Racharla Thirupathi Reddy v. Gundala Shobha Rani⁵**; and **Yeddula Satheesh Kumar Reddy v. Sankireddy Bakkireddi Aseervad Kumar Reddy⁶**, came to the conclusion that the proposed 3rd defendant-Piridi Simhachalam was a *bona fide* purchaser as he was not aware of the order of injunction and purchased the property during lis pendens by way of Sale Deed No.417 of 2015 dated 12.10.2015 and, therefore, it cannot be said

² 2007 (4) ALT 136

³ 2008 (6) ALD 818

⁴ 2016 (1) ALT 109

⁵ 2013 (5) ALT 209

⁶ 2016 (5) ALT 36

that the proposed 3rd defendant did not acquire any rights by virtue of purchase through Sale Deed and, therefore, allowed the impleadment of Piridi Simhachalam and permitted him to come on record as 3rd defendant in O.S.No.161 of 2008, and as 2nd plaintiff in O.S.No.215 of 2008. Aggrieved by the impleadment of the proposed 3rd defendant, the plaintiff Mudunuru Srinivasa Varma filed these two civil revision petitions.

4. Heard the arguments of learned counsel for the petitioner-plaintiff, and respondents-defendants.

5. The point that arise for consideration is whether Piridi Simhachalam, the alleged purchaser of suit schedule property during lis pendens, can be impleaded as 3rd defendant in O.S.No.161 of 2008; and as 2nd plaintiff in O.S.No.215 of 2008 before the trial Court.

6. Learned counsel for the plaintiff contended that the proposed 3rd defendant-Piridi Simhachalam is not a necessary and proper party to the suit as the suit was filed for permanent injunction which is a right in persona. He further contended that the proposed 3rd defendant cannot be permitted to come on record and contest the suit, as any transfer of property during pendency of suit shall be subject to the result of the suit and a lis pendens transferee has to abide by the result of the suit instead of contesting the suit. It is further contended that in case the proposed 3rd defendant has any claim, he can file a fresh suit against the plaintiff, and he cannot be impleaded as a party to the suit filed by the plaintiff for permanent injunction which is a right in persona.

To buttress his contentions, the learned counsel for the plaintiff placed reliance on the decision of the Hon'ble Supreme Court in **Sarvinder Singh v. Dalip Singh**⁷. Paragraph 5 of **Sarvinder Singh (7 supra)** reads as under:

*"5. Section 52 of the Transfer of Property Act envisages that **"during the pendency in any Court having authority within the limits of India.... Of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under the decree or order which may be made therein, except under the authority of the court and on such terms as it may impose."** It would, therefore, be clear that the defendants in the suit were prohibited by operation of Section 52 to deal with the property and could not transfer or otherwise deal with it in any way affecting the rights of the appellant except with the **order** or authority of the Court. Admittedly, the authority or **order** of the Court had not been obtained for alienation of **those** properties. Therefore, the alienation obviously would be hit by the doctrine of lis pendens by operation of Section 52. Under these circumstances, the respondents cannot be considered to be either necessary or proper parties to the suit.*

Learned counsel for the plaintiff has also placed reliance on the decision of this Court in **Charakana Venkat Rao v. Banka Appa Rao**⁸, wherein this Court has observed as under:

"The petitioner filed the aforementioned suit for injunction simpliciter against respondent Nos.1 to 4. Evidently, during the pendency of the suit, the said respondents have sold the property to respondent No.5. Seeking impleadment of the

⁷ 1996 (7) Supreme 210

⁸ Civil Revision Petition No.1473 of 2017

said respondent, the petitioner filed the aforementioned I.A. The Court below has dismissed the same mainly on the ground that the petitioner has not filed the alleged sale deed in favour of respondent No.5. Feeling aggrieved by the said order, the petitioner filed this revision petition. I have heard the learned counsel for the petitioner and perused the record. Though this Court is not in agreement with the reasoning on which the Court below has dismissed the application, it is of the opinion that once respondent Nos.1 to 4 sold away the property to respondent No.5, nothing remains in the suit filed for injunction against them, as, the relief of injunction is one in personam and with the alienation of the property in favour of respondent No.5, respondent Nos.1 to 4 have lost their interest in the property. Therefore, a fresh cause of action arose against respondent No.5. In this view of the matter, it is wholly unnecessary to the petitioner to implead respondent No.5 in the present suit. Instead, the petitioner is given liberty to file a fresh suit against respondent No.5.

Placing reliance on **Sarvinder Singh (7 supra)**, the learned counsel for petitioner submitted that as per Section 52 of the Transfer of Property Act, the alienation of suit schedule property in favour of the proposed 3rd defendant would be hit by the doctrine of *lis pendens* and, therefore, the proposed 3rd defendant, who is a third party, cannot be permitted to come on record and contest a suit filed by the plaintiff for injunction simplicitor.

7. Learned counsel for the 1st defendant contended that the proposed 3rd defendant has purchased the property which is the subject matter of the suit and, therefore, he stepped into the shoes of the 1st defendant and hence his impleadment is necessary for complete adjudication of the suit and, therefore, the order passed by the trial Court does not require interference.

8. On consideration of the arguments of the learned counsel for the petitioner and respondent, and in view of the ratio laid down in **Sarvinder Singh (7 supra)** and the decision of this Court in **Charakana (8 supra)**, it is obvious that the proposed 3rd defendant is a third party who allegedly purchased the suit schedule property during *lis pendens* and, therefore, the alienation of property in his favour by the 1st defendant is hit by Section 52 of the Transfer of Property Act. As aforesaid, O.S.No.161 of 2008 and O.S.No.215 of 2008 are cross suits filed by the respective plaintiffs for injunction simplicitor and the relief claimed is a right in persona, and, therefore, a third party who is a *lis pendens* purchaser cannot be impleaded in the suit proceedings. Therefore, in the light of the foregoing discussion, the order dated 14.02.2017 passed by the trial Court impleading Piridi Simhachalam as 3rd defendant in O.S.No.161 of 2008; and as 2nd plaintiff in O.S.No.215 of 2008, is liable to be set aside, and is accordingly set aside.

9. **IN THE RESULT**, both the civil revision petitions are allowed. The proposed 3rd defendant is at liberty to file a fresh suit against the plaintiff, if he has any claim in respect of the plaint schedule property. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

10th November, 2017

KSM

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



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KSM