

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.4966 of 2014

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful plaintiff is directed against the order, dated 18.09.2014, of the learned Principal Junior Civil Judge, Gurazala, Guntur District, passed in I.A.No.523 of 2014 in O.S.No.73 of 2009.

2. I have heard the submissions of *Sri Raja Reddy Koneti*, learned counsel appearing for the petitioner, and of *Sri N.Subba Rao*, learned counsel appearing for the respondents 1 to 3. I have perused the material record.

3. To begin with, it is to be noted that by the orders impugned in this revision, the plaintiff's application in I.A.No.523 of 2014 filed under Order I Rule 10 (2) read with Section 151 of the Code of Civil Procedure, 1908, with a request to permit to implead the daughters of the sole defendant as defendants 2 and 3, was dismissed by the trial Court. Hence, the aggrieved plaintiff is before this Court.

4. The case of the plaintiff, in support of the above said request, in brief, is this: 'The plaintiff brought the suit against the sole defendant for specific performance based on a contract of sale, dated 27.01.2009. However, after execution of the said agreement of sale, the defendant executed a registered gift deed, dated 16.02.2009, in favour of his daughters, i.e., the proposed defendants 2 and 3. The said gift deed was executed by the defendant in favour of his daughters only to defeat the rights of the plaintiff and to delay and defeat the just claim of the plaintiff and avoid registration of the sale deed in favour of the plaintiff pursuant to the said contract of sale. Since the proposed defendants 2 and 3, who are the daughters of the sole defendant, acquired right, title and interest in the property by virtue of the registered gift

deed executed by the defendant subsequent to the contract of sale also executed by the sole defendant in favour of the plaintiff, they are necessary and proper parties to the suit. Hence, the plaintiff is constrained to file the application for their impleadment as defendants 2 and 3 in the suit.'

5. The case of the sole defendant and the proposed defendants as borne out by the record, in brief, is as follows: 'The sole defendant filed his written statement on 02.09.2011. He is resisting the suit *inter alia* contending that he gifted the suit schedule property to his daughters by virtue of the registered gift deed, dated 16.02.2009, and that the alleged agreement of sale, dated 27.01.2009, is neither true nor valid and that it is a fabricated & antedated and was brought into existence to defeat the rights of the minor daughters of the defendant. The suit is now at the stage of arguments. The present petition is filed to gain time and protract the litigation. There are no *bona fides* in the request of the plaintiff. Hence, the petition is liable to be dismissed.'

6. As already noted, by the orders impugned in this revision, the trial Court dismissed the petition of the plaintiff and refused to grant permission to implead the daughters of the defendant as party defendants 2 and 3 as the plaintiff failed to take appropriate steps at the earliest opportunity and as the petition for impleadment was filed when the suit is at the advanced stage and is coming up for hearing arguments since 11.07.2014.

7. Learned counsel for the plaintiff would submit as under: 'The plaintiff is a lady. She was not properly advised. She is not well-versed with the Court procedures and legal issues. Therefore, she could not take steps promptly for impleadment of the proposed defendants, who are no other than the daughters of the defendant. The delay is not due to laches on her part. In any view of the matter, the delay is not due to any deliberate reasons or *mala fide* conduct of the plaintiff. Merely on the ground of delay, the request of the plaintiff

cannot be denied, more particularly, when the registered gift deed was executed by the defendant in favour of his own daughters that too after entering into the contract of sale with the plaintiff. The daughters of the defendant, by virtue of the said registered gift deed, acquired right, title and interest in the property, which is the subject matter of the suit. Hence, their presence is absolutely necessary in the suit for specific performance. If any decree is granted in their absence, the decree remains a paper decree and cannot be executed against the daughters of the defendant, who acquired right, title and interest after suit contract of sale. Therefore, if the relief sought for is not granted, the plaintiff suffers serious loss.'

8. Per contra, the learned counsel for the defendant(s) while supporting the orders of the Court below, submitted as follows: 'The defendant disclosed about the registered gift deed in the written statement filed on 02.09.2011. Since that date, the plaintiff did not take any steps for impleadment of the daughters of the defendant as defendants 2 and 3. The trial Court is justified in dismissing the petition of the plaintiff, which is filed belatedly at the stage of arguments with a mala fide intention to delay and protract the litigation.'

9. I have given earnest consideration to the facts and submissions.

10. Before proceeding further it is necessary to refer to the legal position obtaining.

Section 19 of the Specific Relief Act, 1963, reads as under:

Relief against parties and persons claiming under them by subsequent title:-
Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

- (a) either party thereto;
- (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;
- (c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(e) when the promoters of a company have, before its incorporation, entered into contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company:

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.”

As per the provision of aforesaid section, specific performance of a contract can be enforced against any other person claiming under the executant of the contract by a title arising subsequent to the contract.

10.1 In Thomson Press (India) Limited v. Nanak Builders & Investors Pvt. Ltd.¹, the question that fell for consideration is this:

“Whether the Appellant who is the transferee *pendente lite* having notice and knowledge about the pendency of the suit for specific performance and order of injunction can be impleaded as party under Order 1 Rule 10 on the basis of sale deeds executed in their favour by the Defendants Sawhneys’.

It is trite to mention that the facts of the cited case disclose that after the institution of the suit for specific performance, the counsel who had appeared for the defendants gave an undertaking not to transfer and alienate the suit property and that notwithstanding the order passed by the Court recording the undertaking given on behalf of the defendants and having full notice and knowledge of all these facts, the sister concern of the appellant entered into series of transactions and finally the appellant M/s. Thomson Press got a sale deed executed in their favour by the defendants in respect of the suit property. Therefore, the alienation in that case was made in violation of an undertaking given to the Court and recorded by the Court.

Hon’ble Sri Justice M. Yusuf Eqbal, in his Lordship’s judgment rendered in the cited case finally held as under:

Having regard to the law discussed hereinabove and in the facts and circumstances of the case and also for the ends of justice the Appellant is to be added as party-Defendant in the suit. The appeal is, accordingly, allowed and the impugned orders passed by the High Court are set aside.

Before parting with the order, it is clarified that the Appellant after implement as party-Defendant shall be permitted to take all such defences which are available to the vendor Sawhneys’ as the Appellant derived title, if any, from

¹ 2013(3) ALD 111

the vendor on the basis of purchase of the suit property subsequent to the agreement with the Plaintiff and during the pendency of the suit.

Hon'ble Sri Justice T.S. Thakur, (as his Lordship then was) in his Lordship's judgment rendered in the cited case held as under:

There is, therefore, little room for any doubt that the transfer of the suit property *pendente lite* is not void ab initio and that the purchaser of any such property takes the bargain subject to the rights of the Plaintiff in the pending suit. Although the above decisions do not deal with a fact situation where the sale deed is executed in breach of an injunction issued by a competent Court, we do not see any reason why the breach of any such injunction should render the transfer whether by way of an absolute sale or otherwise ineffective. The party committing the breach may doubtless incur the liability to be punished for the breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent Court may issue in the suit against the vendor.

We are not on virgin ground in so far as that question is concerned. Decisions of this Court have dealt with similar situations and held that a transferee *pendente lite* can be added as a party to the suit lest the transferee suffered prejudice on account of the transferor losing interest in the litigation post transfer.

His Lordship having then referred to the ratio in the decision in Khemchand Shanker Choudhary v. Vishnu Hari Patil [(1983) 1 SCC 18], further held as under:

To the same effect is the decision of this Court in *Amit Kumar Shaw v. Farida Khatoon* (2005) 11 SCC 403 where this Court held that a transferor *pendente lite* may not even defend the title properly as he has no interest in the same or collude with the Plaintiff in which case the interest of the purchaser *pendente lite* will be ignored. To avoid such situations the transferee *pendente lite* can be added as a party Defendant to the case provided his interest is substantial and not just peripheral.

Finally, his Lordship referred to the decision in *Rikhu Dev, Chela Bawa Harjug Dass v. Som Dass (deceased)* through his Chela Shiama Dass [(1976) 1 SCC 103] and summed up the findings as follows:

- (1) The Appellant is not a bona fide purchaser and is, therefore, not protected against specific performance of the contract between the Plaintiff's and the owner Defendants in the suit.
- (2) The transfer in favour of the Appellant *pendente lite* is effective in transferring title to the Appellant but such title shall remain subservient to the rights of the Plaintiff in the suit and subject to any direction which the Court may eventually pass therein.
- (3) Since the Appellant has purchased the entire estate that forms the subject matter of the suit, the Appellant is entitled to be added as a party Defendant to the suit.
- (4) The Appellant shall as a result of his addition raise and pursue only such defenses as were available and taken by the original Defendants and none other.

In *Basant Kumar Soni v. Mukund Das Soni*² this Court referred to the decision of the Supreme Court in *Sumtibai and others v. Paras Finance Co.*³ and also *Kasturi v. Iyyamperumal*⁴.

In *Kasturi* case the facts disclose that in a suit for specific performance of contract for sale an impleadment petition was filed for addition as party Defendant on the ground that the Petitioners were claiming not under the vendor but adverse to the title of the vendor. In other words, on the basis of independent title in the suit property the Petitioner sought to be added as a necessary party in the suit. Rejecting the petition it was held by a three Judges' Bench of the Supreme Court as under:

As noted herein earlier, two tests are required to be satisfied to determine the question who is a necessary party, let us now consider who is a proper party in a suit for specific performance of contract for sale. For deciding the question who is a proper party in the suit for specific performance the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. Thus, the question is to be decided keeping in mind the scope of the suit. The question that is to be decided in a suit for specific performance of the contract for sale is to the enforceability of the contract entered into between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for title. Therefore, for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary at all.

Be it noted that in *Sumtibai* case (3rd supra), the Supreme Court having referred to the earlier decision in *Kasturi* (4th supra) held as follows:

“Learned counsel for the respondent relied on a three-Judge Bench decision of this Court in *Kasturi v. Iyyamperumal* and Ors.: AIR2005SC2813. He has submitted that in this case it has been held that in a suit for specific performance of a contract for sale of property a stranger or a third party to the contract cannot be added as defendant in the suit. In our opinion, the aforesaid decision is clearly distinguishable. In our opinion, the aforesaid decision can only be understood to mean that a third party cannot be impleaded in a suit for specific performance if he has no semblance of title in the property in dispute. Obviously, a busybody or interloper with no semblance of title cannot be impleaded in such a suit. That would unnecessarily protract or obstruct the proceedings in the suit. However, the aforesaid decision will have no application where a third party shows some semblance of title or interest in the property in dispute.”

² 2010(4) ALD 490

³ (2007) 10 SCC 82

⁴ (2005) 6 SCC 733

From the above observations and findings in Sumtibai case (3rd supra) it appears that a person having semblance of interest or title is entitled to be impleaded as a party to a suit even in a suit for specific performance, in appropriate cases. However, in Kasturi (4th supra) it has been held that in that suit for specific performance of contract for sale of property a stranger or a third party to the contract cannot be added as defendant in the suit. Be that as it may.

In Mumbai International Air port Pvt. Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd. And others⁵, it was contended before the Supreme Court that the decision in Sumtibai case is not good law in view of an earlier three-Judge Bench decision of the Supreme Court in Kasturi case. The Supreme Court having considered the facts and the ratios in the said two decisions had as follows:

“On a careful consideration, we find that there is no conflict between the two decisions. The two decisions were dealing with different situations requiring application of different facets of Sub-rule (2) of Rule 10 of Order 1. This is made clear in Sumtibai itself. It was observed that every judgment must be governed and qualified by the particular facts of the case in which such expressions are to be found; that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision and that even a single significant detail may alter the entire aspect; that there is always peril in treating the words of a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. The decisions in Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay [1992 (2) SCC 524] and Anil Kumar Singh v. Shivnath Mishra [1995 (3) SCC 147] also explain in what circumstances persons may be added as parties.”

Let us consider the scope and ambit of Order 1 of Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo motu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice. This Court in Ramji Dayawala & Sons (P) Ltd. v. Invest Import: 1981 (1) SCC 80 reiterated the classic definition of 'discretion' by Lord Mansfield in R. v. Wilkes 1770 (98) ER 327 that 'discretion' when applied to courts of justice, means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague, and fanciful, 'but legal and regular'. We may now give some illustrations regarding exercise of discretion under the said Sub-Rule.

⁵ AIR 2010 SC 3109

12.1) If a plaintiff makes an application for impleading a person as a defendant on the ground that he is a necessary party, the court may implead him having regard to the provisions of Rules 9 and 10(2) of Order 1. If the claim against such a person is barred by limitation, it may refuse to add him as a party and even dismiss the suit for non-joinder of a necessary party.

12.2) If the owner of a tenanted property enters into an agreement for sale of such property without physical possession, in a suit for specific performance by the purchaser, the tenant would not be a necessary party. But if the suit for specific performance is filed with an additional prayer for delivery of physical possession from the tenant in possession, then the tenant will be a necessary party in so far as the prayer for actual possession.

12.3) If a person makes an application for being impleaded contending that he is a necessary party, and if the court finds that he is a necessary party, it can implead him. If the plaintiff opposes such impleadment, then instead of impleading such a party, who is found to be a necessary party, the court may proceed to dismiss the suit by holding that the applicant was a necessary party and in his absence the plaintiff was not entitled to any relief in the suit.

12.4) If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bona fides etc., the court will normally implead him, if he is found to be a proper party. On the other hand, if a non-party makes an application seeking impleadment as a proper party and court finds him to be a proper party, the court may direct his addition as a defendant; but if the court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit; or the court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms. For example, if 'D' claiming to be a co-owner of a suit property, enters into an agreement for sale of his share in favour of 'P' representing that he is the co-owner with half share, and 'P' files a suit for specific performance of the said agreement of sale in respect of the undivided half share, the court may permit the other co-owner who contends that 'D' has only one-fourth share, to be impleaded as an additional defendant as a proper party, and may examine the issue whether the plaintiff is entitled to specific performance of the agreement in respect of half a share or only one-fourth share; alternatively the court may refuse to implead the other co-owner and leave open the question in regard to the extent of share of the vendor-defendant to be decided in an independent proceeding by the other co-owner, or the plaintiff; alternatively the court may implead him but subject to the term that the dispute, if any, between the impleaded co-owner and the original defendant in regard to the extent of the share will not be the subject matter of the suit for specific performance, and that it will decide in the suit, only the issues relating to specific performance, that is whether the defendant executed the agreement/contract and whether such contract should be specifically enforced. In other words, the court has the discretion to either to allow or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party, merely because he is a proper party."

"If the principles relating to impleadment, are kept in view, then the purported divergence in the two decisions will be found to be non-existent. The observations in Kasturi and Sumtibai are with reference to the facts and circumstances of the respective cases. In Kasturi, this Court held that in suits for specific performance, only the parties to the contract or any

legal representative of a party to the contract, or a transferee from a party to the contract are necessary parties. In *Sumtibai*, this Court held that a person having semblance of a title can be considered as a proper party. *Sumtibai* did not lay down any proposition that anyone claiming to have any semblance of title is a necessary party. Nor did *Kasturi* lay down that no one, other than the parties to the contract and their legal representatives/ transferees, can be impleaded even as a proper party.”

The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of Code of Civil Procedure ('Code' for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

Court may strike out or add parties.

(2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

“The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the question involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party. A 'necessary party' is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a 'necessary party' is not impleaded, the suit itself is liable to be dismissed. A 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/ interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.”

In view of the above settled legal position, which is succinctly stated in the latest decisions even purchasers *pendente lite* are also entitled to be impleaded as parties.

11. In the case on hand, the defendant executed a registered gift deed in favour of his daughters on 16.02.2009 whereas the suit contract of sale is dated 27.01.2009. Therefore, *prima facie*, it appears that the daughters of the defendant, i.e., the proposed defendants 2 and 3, acquired right, title and interest in the property covered by the contract of sale, subsequent to the contract of sale, by virtue of the registered gift deed executed by their father. Thus, the proposed defendants 2 and 3 are no other than the daughters of the defendant and their claim is that they got the property not for money paid in good faith without notice of the original contract, but by virtue of the gift deed where under consideration was love and affection. Jurisdiction to grant decree for specific performance is discretionary and such discretion has to be exercised not arbitrarily but on sound and reasons guided by judicial principles. In that view of the matter, this Court is of the considered view that merely on the ground of delay, the relief cannot be denied to the plaintiff. Further, from the legal position it is also clear that a Court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the question involved in the suit.

12. On the above analysis, this Court finds that the request in petition of the plaintiff seeking permission to implead the daughters of the defendant as proposed defendants 2 and 3 in the suit for specific performance merits consideration and that the order impugned warrants interference in the facts and circumstances of the case and the legal position obtaining. However, to offset the hardship that may be caused to the defendant on account of the

delay in disposal of the suit, it is just and fair to grant relief to the plaintiff after imposing heavy terms.

13. In the result, the Civil Revision Petition is allowed and the order, dated 18.09.2014, of the learned Principal Junior Civil Judge, Gurazala, Guntur District, passed in I.A.No.523 of 2014 in O.S.No.73 of 2009 is set aside and the said interlocutory application is allowed subject to the condition that the petitioner shall pay costs of Rs.5,000/- (Rupees Five Thousands Only) to the defendant through his counsel on record before the trial Court or deposit the same to the credit of the suit within two weeks from the date of receipt of a copy of this order. On making such deposit, the trial Court shall permit the plaintiff to carry out necessary amendments to the plaint as per law and procedure and then further proceed in the matter in accordance with the procedure established by law. However, the trial Court shall endeavour to dispose of the suit as expeditiously as possible and preferably within two months from the date of service of the suit summonses on the defendants 2 and 3. It is made clear that on the failure of the plaintiff to pay or deposit the costs within the time granted in this order, this revision petition shall stand dismissed and the order impugned in this revision shall stand revived.

Miscellaneous petitions, if any, pending shall stand closed.

04th August, 2017
RAR

M. SEETHARAMA MURTI, J