THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.4053 of 2015

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful respondent/plaintiff is directed against the orders, dated 06.04.2015, of the learned Principal Junior Civil Judge, Madanapalle, passed in I.A.No.1 of 2013 in O.S.No.670 of 2007 filed under Order I Rule 10 read with Section 151 of the Code of Civil Procedure, 1908, ('the Code', for short) requesting permission to implead the petitioner/proposed party as 3rd defendant in the suit.

2. I have heard the submissions of *Sri M.N.Narasimha Reddy*, learned counsel appearing for the petitioner/plaintiff, *Sri Gandham Bhaskar*, learned counsel appearing for the 1st respondent/proposed 3rd defendant, and of *Sri K.Suresh Kumar Reddy*, learned counsel for the 2nd respondent/1st defendant. The 3rd respondent/2nd defendant is stated to be not a necessary party. I have perused the material record.

2.1 The parties in this revision shall hereinafter be referred to as plaintiff and defendants as arrayed in the suit and the 1st respondent/3rd party shall be referred to as the proposed 3rd defendant.

3. The case of the proposed 3rd defendant in support of his request for his impleadment as 3rd defendant in the suit, in brief, is this: - 'He is resident of Tirupati. By the year 2005, the 1st defendant was residing at Tirupathi and was running Bajaj Alliance Insurance Franchise at Tirupathi. On 31.08.2005, the 1st defendant approached the proposed 3rd defendant and requested to arrange an amount of Rs.4,50,000/- to discharge the debts of the plaintiff. The 1st defendant offered to deposit the original sale deed standing in the name of his sister, the plaintiff. The 1st defendant mortgaged the plaint schedule property

by way of deposit of title deed. The proposed 3rd defendant gave an amount of Rs.4,50,000/- to the 1st defendant after obtaining mortgage by way of deposit of title deeds in favour his wife, M.Mallika Vasudeva Reddy. The 1st defendant mortgaged the property by way of depositing the title deeds under the authority of General Power of Attorney, dated 17.01.2001, executed by the plaintiff. Before the transaction of the said mortgage, the proposed 3rd defendant telephoned to the plaintiff and with her consent only, the proposed 3rd defendant gave/advanced the amount to the 1st defendant. As this proposed 3rd defendant insisted for additional security, the plaintiff gave post dated cheques to him in the name of his wife, Mallika V.Reddy. Two months later, the plaintiff came down to India. The plaintiff herself came to this proposed 3rd defendant and requested him not to present the cheques given by her as she is going to send the money. Later, in the month of November, 2007, the proposed 3rd defendant came to know that the 1st defendant entered into an agreement of sale with the 2nd defendant. Immediately, he went to the 1st defendant and asked as to how he could execute the agreement of sale in favour of the 2nd defendant when the property was under mortgage. After due discussions the defendants 1 and 2 had agreed to sell the property to this proposed 3rd defendant. On 12.12.2007, both the defendants executed a registered sale deed in his favour. The 1st defendant executed the sale deed under the authority of General Power of Attorney, dated 17.01.2001, executed by the plaintiff. At the time of registration, the proposed 3rd defendant paid an amount of Rs.3,00,000/- to the 2nd defendant and Rs.5,00,000/- to the 1st defendant. After few days, this proposed 3rd defendant received a letter, dated 19.12.2007, calling him to attend the Sub Registrar's office, on 31.12.2007. As per the directions of the Sub Registrar, Madanapalle, he attended the office of the Sub Registrar, Madanapalle, on 31.12.2007. He was informed by the Sub Registrar that the registration was kept pending as M.Vydehi Sreevardhan, i.e., the plaintiff, got issued a legal notice through her advocate, Sri K.M.Kalimulla, to stop the registration. The sale deed was kept pending registration, vide document No.P27/2007. Later, this proposed 3rd defendant got issued a legal notice to the 2nd defendant to pay the amount received by him. But, the 2nd defendant never responded to the said notice. This proposed 3rd defendant has been making enquiries with the 1st defendant regarding the registration and civil case filed by the plaintiff. The 1st defendant has been giving evasive replies. He came to know that the 1st defendant is negotiating with the plaintiff for compromise. If that is the case, this proposed 3rd defendant will be the ultimate loser. Hence, his presence as a party defendant to the suit is very much necessary to protect his interests. Hence, it is prayed that this proposed 3rd defendant may be impleaded as party 3rd defendant in the suit in the interests of justice; otherwise, he will be put to irreparable loss and hardship.

4. The 1st respondent/plaintiff filed a counter. The averments in the counter, in brief, are as follows:

The petition is not maintainable either in law or on facts and it is liable to be dismissed. The plaintiff was not at all indebted to anybody much less in the year 2005. She never authorised the 1st defendant to raise loan to discharge the alleged debts. The plaintiff did not execute the General Power of Attorney, dated 17.01.2001; and, the same is a forged and fabricated document. The plaintiff did not execute the alleged GPA, dated 17.01.2001, authorizing the 1st defendant to deal with the plaint schedule property. The 1st defendant with a dishonest intention and to knock away the property, forged and fabricated the document with the help and assistance of his associates and friends. The alleged GPA is invalid, inoperative and unenforceable as the signatures of the plaintiff and her father are forged by the 1st defendant. It is false to state that at the time of obtaining the mortgage by deposit of title deeds, the proposed 3rd defendant telephoned to the plaintiff and that with her consent only, he gave amounts to the 1st defendant. The plaintiff is the absolute and rightful owner of the plaint schedule house property and she never executed the GPA, dated 17.01.2001, in favour of the 1st defendant and the 1st defendant is not at all the agent of the plaintiff. The plaintiff came to know that, on 01.10.2007, the 1st defendant purporting to be the GPA holder and agent executed a registered agreement of sale in respect of the plaint schedule property in favour of the 2nd defendant. The plaintiff was in USA as on 17.01.2001 and she did not sign the said GPA. The plaintiff, on coming to know of the fraud played by the 1st defendant in collusion with the 2nd defendant, got published a legal notice in Eenadu Telugu daily, Chittoor District Edition, on 04.10.2007. The original registered sale deed pertaining to the site covered by the plaint schedule property has been in the custody of the 1st defendant, who is no other than the younger brother of the plaintiff. She never authorised the 1st defendant to raise loan of Rs.4,50,000/- and she did not issue the cheques to the proposed 3rd defendant as security. The plaintiff handed over blank cheques containing her signatures only to the 1st defendant to draw amounts as and when necessary to meet the construction expenses and to meet his necessities as he has no sources of livelihood. The allegations that after discussions, the defendants 1 and 2 agreed to sell the property to the proposed 3rd defendant and that on 12.12.2007 both the defendants executed a registered sale deed in favour of the proposed 3rd defendant and that the 1st defendant executed the registered sale deed under the alleged authority of general power of attorney, dated 17.01.2001, allegedly executed by this plaintiff and that at the time of registration, the proposed 3rd defendant paid Rs.3 lakhs to the 2nd defendant and Rs.5 lakhs to the 1st defendant and that the further allegations about receipt of letter, dated 19.12.2007, calling upon the proposed 3rd defendant to attend Registrar's office on 31.12.2007 and that the proposed 3rd defendant attended the office of the said Registrar and all other allegations in this regard are not correct. The proposed 3rd defendant is a *bona fide* purchaser for a valuable consideration and that the proposed 3rd defendant came to know that the 1st defendant is negotiating with this plaintiff for compromise and that if that is so, the proposed 3rd defendant will be the ultimate looser is a false allegation. The proposed 3rd defendant has no interest in the subject property. The mortgage by deposit of title deeds is unenforceable and it is an inoperative transaction. The petition is intended to prolong the litigation. The request to implead the proposed 3rd defendant when the suit is at the stage of cross examination of this plaintiff is not maintainable. The petition is liable to be dismissed.

5. I have given earnest consideration to the submissions made in line with the pleadings.

6. A mere and plain perusal of the pleadings would suggest that the proposed 3rd defendant is having interest in the matter and the *lis* can be given a quietus in his presence as he is a necessary and proper party. Admittedly, the 1st defendant is the brother of the plaintiff. The title deed of the property, for whatever reasons, was in his possession. The plaintiff also admits her signatures on the cheques which the proposed 3rd defendant claims to have been issued to him at the time of obtaining the loan on mortgage of the property. As per the contentions of the proposed 3rd defendant, the 1st defendant as GPA holder of the plaintiff and the 2nd defendant executed a registered sale deed in respect of the subject property of the plaintiff and that he has paid Rs.3 lakhs to the 2nd defendant and Rs.5 lakhs to the 1st defendant at the time of registration of the sale deed, but, the said sale deed was kept pending, after assigning a pending registration number, in view of the legal notice got issued by the plaintiff. The proposed 3rd defendant also issued a notice claiming the money paid by him. The proposed 3rd defendant filed the application for his impleadment as party 3rd defendant in the instant suit of the plaintiff on coming to know of the present civil suit filed by the plaintiff against the defendants 1 and 2 to declare the GPA, dated 17.01.2007, as not

valid and binding. The proposed 3rd defendant is claiming to have lent money under a mortgage by deposit of title deeds and that the mortgagee is his wife and that he received the cheques with the signatures of the plaintiff and that he had also obtained a registered sale deed from the 1st defendant as GPA holder of the plaintiff and also from the 2nd defendant by paying huge amounts to the defendants 1 and 2. According to him, he is entitled to have the *lis* decided in his presence in view of the interest he acquired in the property and that if he is not impleaded and the 1st defendant, who is no other than the brother of the plaintiff, compromises in the matter, he would be the ultimate loser. On the above analysis, this Court is of the considered view that the proposed 3rd defendant is a necessary and proper party to the suit and that therefore, the trial Court is justified in passing the order impugned and in permitting the impleadment of the proposed 3rd defendant as party 3rd defendant to the suit.

7. Viewed thus, this Court finds that the order of the trial Court does not brook interference.

8. In the result, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

18.12.2017
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