

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 6491 of 2016

ORDER:

1) The present Civil Revision Petition is filed under Article 227 of the Constitution of India, aggrieved by the order dated 22.06.2016 passed in I.A.No.921 of 2015 in O.S.No.81 of 2012 on the file of the II Additional District Judge, Madanapalle, wherein and whereunder an application filed under Order 1 Rule 10 of C.P.C. to implead the proposed party as defendant No.2 in the suit was dismissed.

2) The facts in issue are as under:

The petitioner filed the above suit against respondent No.1 herein for specific performance of an agreement of sale deed, dated 11.10.2010, directing him to execute the registered sale deed and to deliver the plaint schedule property. It is further pleaded that if the defendant fails to do the same, the same may be ordered through process of law. When the suit was posted for arguments, the petitioner/ plaintiff filed I.A.No.921 of 2015 to implead the proposed party as defendant No.2 in the said suit.

It is stated in the affidavit that just prior to the day of cross examination of DW.1, he came to know that DW.1 created a sham and nominal sale deed in favour of the proposed party.

In the cross examination, DW.1 admitted the same. Hence, the petitioner filed the application to implead the proposed party as defendant No.2 so as to avoid further legal complications and multiplicity of proceedings.

A counter came to be filed by the defendant contending that the suit was filed in the year 2012 and when the suit is coming up for arguments, the present application came to be filed to implead the proposed party as defendant No.2. It is urged that the petitioner is well aware that the defendant and his family members have sold the suit property in favour of the proposed party in the year 2012 itself, but he kept quiet for a long time. It is also stated that when the suit is coming up for arguments, the present application came to be filed only with a view to delay the proceedings.

3) After considering the rival submissions made, the trial Court dismissed the said petition. Challenging the same the present revision is filed.

4) Learned counsel for the petitioner would submit that the proposed party is a necessary party to the suit as the defendant executed registered sale deed in his favour.

5) Learned counsel for the defendant submits that the petition is filed at a very belated stage. He also submits that only with a view to drag the proceedings, the present petition came to be

filed. In order to appreciate the rival arguments, it would be useful to refer to the following judgments.

6) In *Kasturi v. Iyyamperumal and others*¹, the Court was dealing with a situation where the suit was filed for specific performance of contract for sale against respondent Nos.2 and 3. In the said suit respondent Nos.1 and 4 to 11, who were not parties to the contract who had set up a claim of independent title and possession over the contracted property, filed an application to get themselves added as defendants. The trial Court allowed the application on the ground that the respondent has direct interest in the subject matter of the suit and hence their presence would be necessary to decide the controversies raised in the suit. The High Court confirmed the said order. Challenging the same, the plaintiff filed an appeal before the Apex Court. In Para No.21, the Apex Court held as under:

“It may be reiterated here that if the appellant who has filed the instant suit for specific performance of contract for sale even after receiving the notice of claim of title and possession by respondents 1 and 4 to 11 does not want to join respondents 1 and 4 to 11 in the pending suit, it is always done at the risk of the appellant because he cannot be forced to join respondents 1 and 4 to 11 as party-defendants in such suit. In the case of *Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay*² on the question

¹ (2005) 6 SCC 733

² (1992) 2 SCC 524

of jurisdiction this Court has clearly laid down that it is always open to the Court to interfere with an order allowing an application for addition of parties when it is found that the courts below had gone wrong in concluding that the persons sought to be added in the suit were necessary or proper parties to be added as defendants in the suit instituted by the plaintiff-appellant. In that case also this Court interfered with the orders of the Courts below and rejected the application for addition of parties. Such being the position, it can no longer be said that this Court cannot set aside the impugned orders of the courts below on the ground that jurisdiction to invoke power under Order I Rule 10 of CPC has already been exercised by the two courts below in favour of respondents 1 and 4 to 11.”

7) In *Ramesh Chandra Pattnaik v. Pushpendra Kumari and others*³ the Apex Court held as under:

“Respondent 10 is alleged to have entered into an agreement with respondent 1 on 15.11.1984 for sale of the property, which is the subject matter of the suit filed by the petitioner. In respect of such an agreement, respondent 10, could have filed a suit for specific performance but as stated by the learned counsel appearing for the parties, no such suit has been filed. In our opinion respondent 10 was not at all a necessary party for determination of the genuineness or otherwise of the agreement of sale which is said to have been entered into between the petitioner and respondent No.1.”

³ (2008) 10 SCC 708

8) In *Robin Ramjibhai Patel v. Anandibai Rama @ Rajaram Pawar and others*⁴, the Apex Court was dealing with a situation where the plaintiff himself filed an application to implead the subsequent purchasers, which was allowed after explaining the two judgments of the Apex Court referred to above.

9) Since the case on hand stands identical to Robin Ramjibhai Patel (3 supra), I have no hesitation to allow the application. Further an objection has been raised that the application is filed at the stage of arguments and that no reasons are forthcoming as to why the petitioner kept quiet for such a long time.

10) It is to be noted that in the written statement filed by the defendant, the plea of alienating the said property in favour of the proposed defendant was not taken. Even a suggestion was not put to the witnesses, who were examined on behalf of the plaintiff. Only when DW.1 was in box, he came out with the version of alienating the property in favour of the proposed defendant. Immediately thereafter, the plaintiff filed an application seeking impleadment of the said person as party to the proceeding, in order to avoid further complications. It may be true that, if necessary, issues are to be re-framed and examination of some of the witnesses has to be done but the petitioner cannot be blamed for that since the said version came on record only when DW.1 was in box. The finding of the trial Court that since the proposed defendant and plaintiff are

⁴ Civil appeal arising out of SLP © No.31087/2014

residing in the same village, the plaintiff would be knowing the transaction between the defendant and proposed defendant cannot be accepted. Though, both are residing in the same village, it is not necessary that the petitioner should be aware about the transaction.

11) For the aforesaid reasons, this Court is of the view that the proposed defendant is a necessary party to the proceedings.

12) Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs. As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed.

16.03.2017
gkv



C. PRAVEEN KUMAR, J