

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.2346 OF 2011

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the order dated 08.09.2010 in I.A.No.120 of 2010 in O.S.No.68 of 2007 on the file of Senior Civil Judge, Jagtial. The said I.A. was filed under Order 1 Rule 10 CPC read with Rule 28 CPC to implead respondent Nos.10 to 12 as defendants in the suit.

The said suit was filed for partition in the year 2007. The defendants in the said suit filed a written statement and contested the matter.

In I.A.No.120 of 2010, it is held that during the pendency of the suit, defendant No.1 died and his legal representatives, defendant Nos.10 and 11, were impleaded vide order dated 03.11.2009 in I.A.No.621 of 2008. Later, defendant No.7's daughter got herself impleaded as defendant No.12 vide order dated 03.11.2009 in I.A.No.53 of 2008. The petitioner-plaintiff also filed I.A.No.620 of 2008 to amend the plaint to include Sy.Nos.1765 and 436 as item Nos.5 and 6 of the plaint schedule properties and the same was allowed by order dated 03.11.2009.

The proposed defendant Nos.11 and 12 claims to be the donees of defendant No.1-donar under gift deed dated 25.11.2008.

It is evident from the record that the execution of a gift deed by defendant No.1 in favour of proposed defendants is a transfer *pendente lite* and the properties were included in the suit schedule properties vide order, dated 03.11.2009. But the trial Court dismissed the petition on the ground that the subsequent

purchasers during the pendency of the suit are not entitled to come on record as defendants. Relying on the principles laid down in **Bibi Zubaidar Khatoon v. Nabi Hassan Saheb¹, Pannala Renuka v. Kavali Rajumouni Venkataiah² and G.Krishnaiah and another v. G.Yoganand and others³**, the Court below held that persons who acquired title over the property during pendency of the suit are not entitled to be impleaded, as such transactions are hit by Section 52 of Transfer of Property Act and the subsequent purchasers are neither necessary nor proper parties and they are bound by the decree passed by the Court.

In the present case, item Nos.5 and 6 of the suit schedule properties which were added to the plaint schedule by amendment of the plaint vide order dated 03.11.2009 in I.A.No.621 of 2008 were not initially shown. But the petitioners filed the present I.A.No.120 of 2010 subsequent to inclusion of item Nos.5 and 6 based on the gift deeds dated 23.01.2008 and 25.11.2008. Though the said properties were gifted under registered gift deeds even before impleading them, the properties were added to the schedule as item Nos.5 and 6. Therefore, by the date of execution of gift deeds, the suit against item Nos.5 and 6 is not pending, consequently, it is difficult to hold that the transfer in favour of the proposed parties is hit by *pendente lite* since it was not transferred during the pendency of the suit in respect of item Nos.5 and 6. Therefore, the finding recorded by the trial Court basing on the principles laid down in the judgments referred supra is erroneous for the above reason. Since the proposed parties became owners

¹ AIR 2004 SC 173

² 2006(6) ALD 761

³ 2006(5) ALD 560

by virtue of gift deeds dated 23.01.2008 and 25.11.2008 and those properties were included in the schedule subsequent to execution of gift deed, they are entitled to come on record, but the trial Court on misconception held that the said transaction is hit by Section 52 of the Transfer of Property Act and dismissed the petition erroneously.

Hence, the order of the trial Court is hereby set aside and allowed the order in I.A.No.120 of 2010 in O.S.No.68 of 2007 pending on the file of the Senior Civil Judge, Jagtial, impleading the proposed parties as defendants in the main suit.

Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs.

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

JUNE 07, 2017
ssp

M. SATYANARAYANA MURTHY, J

