

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.2391 of 2017

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, by the petitioners/proposed defendants is directed against the orders, dated 17.04.2017, of the learned VI Junior Civil Judge, City Civil Court, Hyderabad, passed in I.A.No.99 of 2017 in O.S.no.870 of 2016.

2. I have heard the submissions of *Sri C.Paghu*, learned counsel, appearing for *Sri T.Pajanikanth Reddy*, learned counsel for the petitioners/proposed defendants, and of *Sri Vedula Srinivas*, learned senior counsel for the respondents-plaintiffs. I have perused the material record.

3. The facts and the chronology of events, which are discernable from the submissions made and the material record, and which require consideration, in brief, are as follows: 'The petitioners/proposed defendants are brothers. They are absolute owners and possessors of a shop bearing no. A, Cellar Floor, admeasuring 101 square feet out of 416.83 square feet including common area together with undivided share of land of 1.08 square yards in the premises bearing no.15-6-615 to 15-6-619 situated at Begum Bazar, Siddiamber Bazaar, Hyderabad, by virtue of registered sale deed, bearing document No.2074 of 2010, dated 29.11.2010, executed by *G.Dayanand Reddy*. Subsequently, a Memorandum of understanding, dated 29.11.2010 was entered into for construction of a commercial complex within one year and for handing over a road facing shop in the first floor in the place of the above said shop of the petitioners/proposed defendants. However, *G.Dayanand Reddy* constructed ground + four floors commercial complex without

either a sanctioned plan or permission for construction of such commercial complex. The petitioners/proposed defendants got information from Circle IV of the Greater Hyderabad Municipal Corporation (GHMC), as per the provisions of the Right to Information Act. The petitioners/proposed defendants earlier filed O.S.No.2209 of 2012 against G.Dayanand Reddy on the file of Junior Civil Court, City Civil Court, Hyderabad, for injunction not to proceed with the constructions. However, according to the petitioners/proposed defendants no interim order was granted as the constructions was partly completed. After the said suit was dismissed, an appeal in A.S.No.43 of 2017 was filed; and, the same is pending on the file of IX Additional Chief Court, City Civil Court, Hyderabad. The original owners who sold away the property to the said Dayananda Reddy also filed O.S.No.963 of 2013 against GHMC alleging that the GHMC is interfering with repair work. The trial Court granted *Status Quo* orders. GHMC filed a written statement in June 2013 stating that the constructions were made without any sanctioned plan or permission for constructions. The said suit was allowed to be dismissed for default on 23.01.2014. The petitioners/proposed defendants filed W.P.No.39418 of 2014 before this Court to direct the GHMC to demolish the said illegally constructed commercial complex. It is stated that this Court passed interim orders, on 23.12.2014. In the meantime, Dayananda Reddy and others having filed O.S.No.1624 of 2014 on the file of VI Junior Civil Judge, City Civil Court, Hyderabad, obtained *status quo* orders and produced the same before this Court in W.P.no.39418 of 2014. In the said writ petition, the challenge was to the inaction on the part of the GHMC with reference to the illegal constructions made in the premises No.15-6-615 to 619 situated at Sddamber Bazar, Hyderabad, to an extent of 101 square

feet, by the 4th respondent therein, that is, G.Dayanand Reddy, even though such construction was made without any approved building permission. In the said writ petition, the petitioners/proposed defendants contended that there was no building permission granted by GHMC, whereas respondent no.4 therein contended that building permission was obtained and construction was made in accordance with the building permission. Since the same property is the subject matter of the above said suit pending on the file of VI Junior Civil Judge, Hyderabad, this Court, by order, dated 19.08.2015, disposed of the writ petition observing as follows:

“Having regard to the fact that the above premises is the subject matter of the suit pending before the VI Junior Civil Judge, City Civil Court, Hyderabad, this Writ Petition is disposed of, vacating the earlier interim order granted in W.P.M.P.no.49441 of 2014 on 23.12.2014. All the issues raised in the writ petition are left open and it is open to the petitioners to contest the said suit and prosecute the matter further. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.”

Thus, in view of the pendency of the suit filed by Dayanand Reddy and others, the writ petition was accordingly disposed of. In fact, the petitioners/proposed defendants filed the suit in O.S.No.2209 of 2012 on the file of III Junior Civil Judge, Hyderabad, for perpetual injunction restraining Dayanand Reddy and his agents from interfering with the possession of the petitioners/proposed defendants over the suit schedule property, i.e., their original shop A in Cellar Floor, admeasuring 101 square feet, which is demolished. The petitioners/proposed defendants also filed O.S.No.850 of 2013 on the file of the Court of XXV Additional Chief Judge, City Civil Court, Hyderabad, against G.Dayanand Reddy and

another, that is, the 2nd plaintiff in the present suit, for mandatory injunction and damages. After obtaining the *status quo* orders in O.S.No.1624 of 2014 and after the disposal of the above said W.P.No.39418 of 2014 filed by the petitioners/proposed defendants, the suit O.S.No.1624 of 2014 was withdrawn. Thus, by obtaining *status quo* orders in the said suit, the writ petition of the petitioners/proposed defendants was allowed to be disposed; and later, the suit was withdrawn though there was direction in the orders of this Court that all the issues raised in the writ petition are left open and it is open to the petitioners herein to contest the said suit and prosecute the matter further. Thereafter, the subject suit is filed by the present plaintiffs, Laveena and others, against the GHMC without impleading the proposed defendants as parties to the said subject suit and a temporary injunction order was obtained against the GHMC. The said order was granted as the GHMC failed to file its counter in the interlocutory application. One of the contentions of the petitioners/proposed defendants is that the said order was granted contrary to the ratios in the decisions of this Court. It is apt to note that the petitioners/proposed defendants also filed W.P.No.18999 of 2016. In the said writ petition this Court granted interim directions, on 10.08.2016, directing the respondents from putting the subject construction to any use until further orders. The subject suit O.S.No.870 of 2016 is filed seeking the following reliefs: (i) to grant perpetual injunction restraining the defendant corporation, its employees, subordinates, workmen or any other person or persons claiming through or acting under it from interfering with construction work or demolishing any part of the suit property either in whole or in part; (ii) to grant costs of the suit; and (iii) to grant such other additional or alternate relief as the Court deems fit and proper in the

circumstances of the case.” The GHMC already filed a written statement in the suit stating that illegal and unauthorised construction of cellar, ground and four upper floors are made in the suit property by clubbing it with the property of adjoining property owners and that there are several complaints against the said constructions and that the constructions made are illegal and unauthorised constructions. Now, the petitioners/proposed defendants seek their impleadment in the aforesaid suit as they admittedly got right, title and interest to the extent of one shop portion area in the entire property and are entitled to have possession of a constructed road facing shop in the first floor as per the terms of the MOU, dated 29.11.2010.

4. In this backdrop, the question now is - whether the petitioners/proposed defendants are entitled to be impleaded in the subject suit? Admittedly, the proposed defendants together are the joint owners of shop 'A' in the cellar admeasuring 101 square feet out of 416.83 sq. feet including common area together with undivided share of land of 1.08 square yards within the premises bearing no.15-6-615 to 15-6-619 situated at Begum Bazar, Siddiamber Bazar, Hyderabad, having acquired right, title and interest in it under registered sale deed bearing document no.2074 of 2010, executed by Dayanand Reddy, who intended to construct a commercial complex on the property and also on the adjoining property of other owners. The proposed defendants entered into an MOU, dated 29.11.2010, with the said Dayanand Reddy. After constructing a commercial complex, which is agreed to be completed within nine months from the date of the said MOU, the said Dayanand Reddy, has to transfer and hand over possession of road facing shop in the first floor of the newly constructed complex to the proposed defendants. The grievance of the petitioners/ defendants is that no such

shop was constructed and handed over to them and that construction of the complex was made without obtaining any construction permission from the GHMC and that it is an illegal construction. Therefore, a number of litigations sprouted between the parties and others. Ultimately, the present plaintiffs brought the present suit without impleading the petitioners/proposed defendants as parties to the suit and sought a perpetual injunction against the GHMC in the instant suit restraining the GHMC from interfering with the construction work or demolishing any portion of the property. The plaintiffs in the present suit *inter alia* contend that they are the absolute owners and possessors of the portion of the house property bearing premises no.15-6-613, 613/ 1 to 6, 614/ 1 & 2, 615, 615/ 6, 618 & 619 admeasuring 8385 sq. feet together with undivided share of 212 sq. yards out of 488 sq. yards situated at Feelkhana, Bebum Bazar, Hyderabad, having obtained the same through registered partition deed, dated 24.12.2006, with existing basement, ground and 4 upper floors, and that the said construction was made by the vendors of the plaintiffs by obtaining permission and sanction, vide permission no.260/35, dated 28.09.1989. They also submit that the plaintiffs have also obtained permission for making construction in the remaining portion, vide permit No.3430/ DC/ SZ/ Cir-V/ 2011, dated 04.07.2011. Whereas the case of the petitioners herein i.e., the proposed defendants is that as per the MOU, construction was not made after obtaining necessary permission for construction from the GHMC and that the terms of the MOU are violated and that since constructions are made without obtaining sanction/permission for construction, the constructions are liable to be demolished and they are entitled to their original shop premises which existed before demolition of the property for reconstruction. In fact, as already noted, they had

already filed a suit in O.S.No.850 of 2013 against Dayanand Reddy and the 2nd plaintiff in the instant suit for damages in a sum of Rs.50 lakhs and for other reliefs. Now, the plaintiffs *inter alia* contend that they have applied to the GHMC under Building Regularization Scheme (BRS) and that, therefore, the petitioners/ defendants are not entitled to be impleaded as parties to the suit. The fact of the matter is that GHMC has not filed counter in the interlocutory application and allowed temporary injunction to be granted in favour of the plaintiffs in the suit. Therefore, one of the contentions of the proposed defendants is that the officials of the GHMC are colluding with the plaintiffs in the instant suit though it is the specific case of the GHMC that there is neither sanctioned plan nor permission for construction for the commercial complex that was illegally constructed. Not only for the reason that the petitioners/ proposed defendants are having right, title and interest in a portion of the property but also for the reason that the commercial complex was constructed without permission as per the defence of the GHMC and in view of the conduct exhibited by the officers of the defendant-GHMC in the subject suit, this Court is of the considered view that the petitioners/ proposed defendants are entitled to be impleaded as party defendants to the suit to protect their interests and to see that no collusive decree is obtained by the plaintiffs against the GHMC detrimental to the interests of the petitioners/ proposed defendants, who are having right, title and interest in the part of the property.

5. In view of the chronology of events, which are undisputed, and for all the reasons assigned, this Court finds that the order of the trial Court dismissing the petition of the petitioners/ proposed defendants for their impleadment in the subject suit is not justified and is, therefore, liable to be set aside.

6. It is apt to note that the learned senior counsel appearing for the plaintiffs relied upon the decision in Vidhur Impex and Traders Pvt. Ltd. And Ors. v. Tosh Apartments Pvt. Ltd. And Ors.¹. The facts of the case disclose that the Delhi High Court had restrained respondent no.2 therein from alienating suit property or creating third party interest, but transactions were entered into in clear violation of the order of injunction passed by the Delhi High Court; therefore, the Supreme Court held that those transactions did not confer any right upon the Appellants or Bhagwati Developers and that, therefore, their presence is not at all necessary for adjudication of the question whether Respondent nos. 1 and 2 had entered into a binding agreement and whether Respondent no. 1 is entitled to a decree of specific performance of the said agreement. In this cited decision the Supreme Court having considered the relevant provisions and precedents on the point laid down the broad principles as follows:

Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as Plaintiff or Defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit.
2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the Court.
3. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.
4. If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the Plaintiff.
5. In a suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who

¹ AIR2012SC2925

files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the Court or the application is unduly delayed then the Court will be fully justified in declining the prayer for impleadment.

From the facts and ratios in the above cited decision it appears that *pendente lite* alienations/transfers that are made in violation of restraint orders or injunction orders do not confer any rights on the *pendente lite* purchasers and that such alienations are to be treated as *non est* and that such *pendente lite* purchasers are not entitled to seek their impleadment in a pending suit and that Courts would be fully justified in declining the prayer for impleadment made by such applicants who are guilty of contumacious conduct or are beneficiaries of clandestine transactions made in violation of restraint orders. In the case on hand the petitioners'/proposed defendants' title and interest are much prior to the commencement of litigations. It is apt to now refer to a later/recent decision in Thomson Press (India) Ltd., v. Nanak Builders & Investors P. Ltd.,². In this cited case, 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, 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

² 2013 (3) ALD 111(SC)

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 lordships 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 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, in his lordships judgment rendered in the cited case held as under:

There is, therefore, little room for any doubt that the transfer of the suit property *pendete 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 Shiyama 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 this decision, the Supreme Court has referred to and considered the earlier decision in *Vidhur Impex* (1 supra). Having regard to the legal position in the decisions which is discussed above and in view of the precedential guidance and the ratio in the latest decision in *Thomson Press* (2nd supra), this Court is of the considered view that the proposed defendants' request for their impleadment has to be considered in the facts and circumstances of the case and also to meet the ends of justice.

7. In the result, the Civil Revision Petition is allowed with costs and the order impugned is set aside. As a sequel, I.A.No.99 of 2017 in O.S.no.870 of 2016 on the file of the learned VI Junior Civil Judge, City Civil Court, Hyderabad, is allowed with costs directing impleadment of the petitioners herein as party defendants 2 and 3 to the said suit.

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

M. SEETHARAMA MURTI, J

03.10.2017
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