

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 1045 of 2017

ORDER:

1) Aggrieved by the order, dated 30.01.2017, passed in I.A.No.20 of 2014 in O.S.No.56 of 2013 on the file of the XI Additional District Judge, Piler, wherein an application filed under Order I Rule 10 of C.P.C., to implead the proposed parties as defendants 15 and 16, was allowed, the plaintiff filed the present Civil Revision Petition, under Article 227 of the Constitution of India.

2) The petitioner/plaintiff filed O.S.No.56 of 2013 with the following prayer:

“i)pass judgment and decree in favour of the plaintiff and against defendant Nos.8 and 9 that the sale deed dated 28.10.2010, registered with the office of the Sub-Registrar, Piler, is null and void and the same may be called for and cancelled.

ii) granting permanent injunction in favour of the plaintiff as against the defendants, their men, servants, agents, etc., and all other persons related to or claiming under them, restraining them from alienating, encumbering or changing the nature of the suit schedule property till the sale deed dated 28.10.2010 is cancelled through due process of law.

iii) granting permanent injunction in favour of the plaintiff and against the defendants, their men, servants, agents, etc., and all other persons related to or claiming under them, restraining them from interfering with peaceful possession and enjoyment of the plaint schedule property.

iv) grant costs of the suit and pass such other order and further orders to meet the ends of justice.”

3) Pending the suit, I.A.No.209 of 2014 came to be filed by the proposed parties to implead themselves as defendants 15 and 16, stating that prior to filing of the suit, defendant Nos.8 and 9 sold Ac.0.26.85 cents of land in their favour and executed a registered sale deed bearing document No.4785 of 2011 dated 21.12.2011 in their favour and put them in possession of the same. It is urged that without impleading them as parties, the plaintiff filed the suit against defendant Nos.8 and 9, who are the vendors of the proposed parties. Since the proposed parties being bonafide purchasers, they contend that their presence is very much essential and no prejudice would be caused to the plaintiff, if they are impleaded as parties.

4) A counter came to be filed by the plaintiff denying the averments made in the affidavit filed in support of the petition. It is also stated that the proposed petitioners are much aware about the fact that their vendors are not holding any right and title over the property and only in collusion with defendant Nos.8 and 9, they created the said sale deed, with a view to harass the plaintiff. It is pleaded that the present petition is filed only to drag on the proceedings.

5) Respondent No.12, who is defendant No.11 in the suit, also filed a separate counter raising the same contentions advanced by the plaintiff.

6) After considering the material available on record, the trial Court allowed the petition. Challenging the same the present revision is filed.

7) Before proceeding further, it would be useful to refer to Order I, Rule 10 of C.P.C. which reads as under:

Order I. Rule 10. Suit in name of wrong plaintiff.(1)
Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or add parties. 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.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

Where defendant added, plaint to be amended. (4)
Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as

may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the Indian Limitation Act, 1877, Section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

8) A perusal of Order 1 Rule 10 of the CPC would show it is open to the Court to add any such person as necessary party in the suit, so as to enable the Court to effectively adjudicate the questions involved in the suit. Under Order 1 Rule 10 of C.P.C., impleadment can be ordered by the Court when it finds that in the absence of the applicant seeking impleadment as party to the suit, the controversy raised in the suit cannot be effectively and completely settled.

9) The learned counsel for the petitioner mainly submits that an enquiry was conducted in which the authorities found that there is fudging or tampering of entries in RH register. A criminal case is also registered and as such there is no need to implead them as respondents, since the suit has to be decreed.

10) It may be true that criminal case is registered and that some fraud might have taken place between the defendants (original owners) and officials. In the said circumstances, the original owners may not contest the suit as he claims to have sold the property to the proposed parties. If any order is passed, without hearing the proposed parties it would definitely cause

great prejudice to them. In that view of the matter, this Court is of the opinion, it would be just and proper to allow the proposed parties to come on record and contest the matter.

11) Further a reading of the affidavit and the counter, *prima facie* indicate that the proposed parties are bonafide purchasers and are also claiming a portion of land in plaint C-Schedule property. As stated earlier, the claim of the proposed parties is that they purchased the said property from defendant Nos.8 and 9 prior to the filing of the suit. It is also stated that the plaintiff has not added them as parties only with an intention to obtain an injunction order behind their back. It is to be noted that no prejudice would be caused to the plaintiff, if they are added as defendants in the suit. Since the claim made by the proposed parties would be based on the documents, there is nothing wrong in allowing the proposed defendants to come on record, so as to prove their case.

12) Hence, this Court is of the view that the order under challenge, wherein the proposed respondents are made as parties to the proceedings, as defendant Nos.15 and 16, warrants no interference. For the aforesaid reasons, I see no merits in the revision and the same is liable to be dismissed.

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

14) As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed.

C. PRAVEEN KUMAR, J

11.08.2017
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