

**THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

**CIVIL REVISION PETITION No.5604 OF 2012**

**ORDER:**

The civil revision petition is filed questioning the order dated 06.03.2012, passed by the II Additional Senior Civil Judge, Warangal in I.A.No.351 of 2011 in O.S.No.126 of 2000, wherein and whereby the application filed by the proposed-54<sup>th</sup> respondent seeking him to be added as a party defendant to the suit, was allowed.

It is the case of the petitioner-plaintiff that he had filed a suit in O.S.No.126 of 2000 on the file of II Additional Senior Civil Judge, Warangal seeking for partition of the joint family properties. It is further stated that the petitioner had purchased a portion of the suit schedule property through an unregistered sale agreement dated 19.03.1999 from the 2<sup>nd</sup> defendant and the petitioner had also filed another suit in O.S.No.675 of 2009 on the file of Principal Junior Civil Judge, Warangal. In those circumstances, the petitioner has interest in the partition suit and he ought to have joined as a party defendant as he is a proper and necessary party for adjudication of the suit claim.

It is the contention of the learned counsel for the petitioner that any decision relation to the partition suit is likely to effect in the event of the suit filed by him being decreed in his favour. It is further contended that the proposed party defendant has no right in the property as on the date of filing of the application and as such he is neither necessary party nor the proper party. It is also the contention of the petitioner that even as per the case of the implead petitioner that he has filed a suit for specific performance seeking implementation of the alleged agreement of sale dated

19.3.1999 executed by the 2<sup>nd</sup> defendant. Unless the suit is decreed and the sale deed is executed in his favour, the implead petitioner would not get any right in the property. The suit filed by the petitioner being a partition suit and at that stage, the implead petitioner has no right. In support of the legal proposition that an agreement of sale by itself does not create any right in the property, learned counsel for the petitioner placed reliance on the judgments in **Raheja Universal limited vs. NRC Limited and others**<sup>1</sup> and **Ramji Patel and another vs. Irukulla Narender and others**<sup>2</sup>.

On the other hand, Sri A. Prabhakar, learned counsel appearing for the contesting respondents and the implead petitioner in the impugned I.A while supporting the order passed by the Court below in the impugned I.A submits that adding of his client as a party defendant to the suit is only to avoid the multiplicity of the litigation as in the event of specific performance suit being decreed, his client would have right in the property and such right can be determined at this stage itself and if his client is added as a party defendant to the extent of share of the property which is agreed to be sold to the 2<sup>nd</sup> defendant.

Having considered the respective submissions and the facts of the present case, it cannot be said that the implead respondent has any right in a partition suit filed by the plaintiff. Admittedly, the implead respondent is an outsider and on his own right he has neither claim nor a right in the property which is the subject matter of the partition suit. At the stage at which the implead application came to be allowed, his right vis-à-vis the property for

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<sup>1</sup> (2012) 4 Supreme Court Cases 148

<sup>2</sup> 2004(5) ALD 403

which the alleged agreement of sale has been executed by the 2<sup>nd</sup> defendant is only to seek specific performance of the agreement of sale. In other words, there is no crystallized right at that stage. As rightly contended by the learned counsel for the petitioner and as decided by the Supreme Court that an agreement of sale by itself does not create any right. It is also well settled that even a judgment and decree granting the specific performance by itself does not create any right in the property with respect to the immovable property and it is only on execution of a sale deed and registration of the same would only bring him a right. Reference may be made to the judgment in **Babu Lal v. M/s. Hazari Lal Kishore Lal and others**<sup>3</sup>

In those circumstances, the impugned order of the Court below impleading the proposed party as a defendant to the suit is erroneous and accordingly the same is liable to be set aside.

Accordingly, the civil revision petition is allowed setting aside the order dated 06.03.2012, passed by the II Additional Senior Civil Judge, Warangal in I.A.No.351 of 2011 in O.S.No.126 of 2000. However, it is made clear that allowing of the present civil revision petition shall not be construed as impairing the rights of the respondents in any manner with respect to the suit in O.S.No.675 of 2009 on the file of the Principal Junior Civil Judge, Warangal. No order as to costs.

Consequently, the miscellaneous Applications, if any shall stand closed.

**CHALLA KODANDA RAM, J**

07<sup>th</sup> September, 2017

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<sup>3</sup> AIR 1982 Supreme Court 818

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**Date:07.09.2017**

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