

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No.6554 OF 2017

ORDER:

The petitioner is defendant in O.S.No.47 of 2006 on the file of the Junior Civil Judge, Sullurpet. The said suit was filed by the third respondent herein seeking a declaration of title in respect of plaint 'B' schedule property and the petitioner herein filed a Written Statement. After considering the case of the respective parties, the suit was decreed in favour of the third respondent herein. Against the said Judgment and decree, dated 03.12.2012, the petitioner herein preferred A.S.No.2 of 2013 before the learned Senior Civil Judge, Gudur. The same was transferred to the Court of the VII Additional District Judge, Gudur and it was re-numbered as A.S.No.88 of 2016. In the said Appeal, the petitioner herein filed I.A.No.184 of 2016 seeking impleadment of respondents 1 and 2 herein and when the application was dismissed by order dated 27.10.2017, the present civil revision petition is filed.

The petitioner in support of his application in I.A.No.184 of 2016 stated that he came to know that the plaintiff already sold the entire suit schedule property way back on 12.07.2006 to the proposed parties under a registered Sale Deed bearing document No.1963 of 2006 and the third respondent herein suppressed the said fact. He further stated that he has no knowledge about the said sale and he obtained certified copy of the sale deed recently.

In those circumstances, it is for the proposed parties to prosecute the proceedings, if at all they are interested, against the third respondent herein, but not the petitioner herein. The original plaintiff filed a counter stating that the petitioner filed the said application along with two more applications in order to drag on the matter, though the petitioner squatted on the property situated in Survey No.42. It is further stated that the proposed parties and the plaintiff are having common interest and there is no conflict of interest.

Though a sale deed was executed in respect of plaint 'A' schedule property on 12.07.2006, the plaint 'B' schedule property is not covered by the said sale deed as he has not received the entire consideration. The lower appellate Court dismissed the application with the following observations.

"13. The plaintiff claims that he was in possession of plaint 'A' schedule property, as on the date of filing of the suit. As seen from the written statement, the defendant has not made any claim in respect of plaint 'A' schedule property though he made claim in respect of plaint 'B' schedule property. As such, no prejudice would be caused to the petitioner/defendant in not impleading the subsequent purchasers of plaint 'A' schedule property. The apprehension of the petitioner is that if he succeeds in the appeal, he has to face consequences which are likely to be effected by third parties. But as already discussed, the petitioner/defendant has not made any claim in respect of plaint 'A' schedule property which was alienated subsequent to the suit. As such, even if the petitioner succeeds in the appeal, he would not face any consequences. Even otherwise, the purchaser *pendente lite* is bound by the decree."

In view of the above, I am also of the view that the present petitioner is not affected by the said sale and it is open to him to take appropriate proceedings in the present Appeal, but not by seeking impleadment of the proposed parties. The presence of the proposed parties is unnecessary for deciding the appeal. The appeal can be decided on the basis of the evidence already adduced in the suit.

In the circumstances, this Court sees no grounds to interfere with the order passed by the lower appellate Court.

The civil revision petition is accordingly dismissed. Consequently, miscellaneous petitions pending, if any, shall stand closed.

A.RAMALINGESWARA RAO, J

30.11.2017
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