

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

C.R.P. No.6745 OF 2017

ORDER :

Vide the present petition, the petitioner has challenged the order dated 15.09.2017 passed in I.A. No.425 of 2017 in O.S.No.61 of 2011 by the Principal Junior Civil Judge, Gurajala, whereby I.A. filed by the petitioner mentioned above under Order XXIII Rule 1 CPC to grant permission to the petitioner to abandon the claim/suit against 4th respondent/defendant by way of withdrawing the claim against him. The said application has been dismissed. Being aggrieved, the present petition has been filed.

2. It is not in dispute that the petitioner/plaintiff has filed suit for specific performance of agreement of sale dated 10.03.1997 against respondents No.1 to 3/defendants No.1 to 3 and for grant of permanent injunction against 4th respondent/4th defendant.

3. In the plaint, it is alleged that the petitioner has purchased the suit schedule property under an agreement of sale dated 10.03.1997 for a valuable sale consideration of Rs.13,000/- and accordingly he was put in possession of the schedule property. The respondents No.1 to 3 were set ex parte and 4th respondent was contesting the proceedings alleging that he has purchased the schedule property from 1st respondent and Ravuri Venkata Brahmachary, who is the husband of 2nd respondent and the father of 3rd respondent under a registered sale deed dated 16.02.2010. On the basis of rival contentions, the trial Court settled the issues and commenced the trial, wherein the petitioner as PW.1 was cross-examined at length by 4th respondent and when

the matter was posted for further evidence of petitioner, conditionally on cost of Rs.50/-, the petitioner initially came with a memo to not press the claim against 4th respondent, and later on, he filed I.A No.425 of 2017.

4. It is not in dispute that, in the plaint, the petitioner has made averment that the 4th respondent is necessary party to the proceedings and it was alleged in the plaint that the 4th respondent was interfering with the possession and enjoyment over the schedule property. The petitioner thereafter filed the aforesaid I.A. seeking permission to withdraw the claim against 4th respondent. Learned trial Court held that once the 4th respondent is necessary party to the suit proceedings, no permission can be granted to the petitioner.

5. As argued by the learned counsel for the petitioner that the 4th respondent has filed suit in O.S.No.20 of 2011 on the file of Principal Junior Civil Judge, Gurazala, and the same was dismissed as withdrawn on 13.12.2016 against the petitioner, therefore, he decided to withdraw the proceedings against 4th respondent.

6. It cannot be a disputed fact that the petitioner is entitled to withdraw the suit against all the defendants or any one of them. But in the present case, once it is stated that the party is necessary in the suit and when he made a party to the suit, then unless prejudice is caused to the petitioner, he cannot be permitted to withdraw the claim against any one of the defendants. The petitioner having contesting the suit proceedings by examining himself as PW.1, he cannot take advantage of Order XXIII Rule 1

CPC to abandon the claim against 4th respondent. It is the specific case of the 4th respondent that he allegedly purchased the schedule property under a registered sale deed dated 10.02.2010 therefore the property rights of the 4th respondent are involved in the case, who is a subsequent purchaser.

7. It is also not in dispute that respondents No.1 to 3 are proceeded ex parte and remained only 4th respondent, so, if the 4th respondent is also allowed to withdraw, then the suit will be answered without any contest.

8. In view of the facts recorded above, I hereby find no illegality or perversity in the order dated 15.09.2017 passed by the trial Court in I.A. No.425 of 2017 in O.S.No.61 of 2011.

9. Finding no merit in the instant petition and the same is accordingly dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SURESH KUMAR KAIT, J.

Date : 15-12-2017
Gvl