

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.3636 OF 2017

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, assailing the order dated 04.7.2017 passed in I.A.No.257 of 2016 in O.S.No.23 of 2010 on the file of the Court of Senior Civil Judge, Kavali.

2. Heard the learned counsel for the petitioner-third party and learned counsel for the first respondent-plaintiff.

3. The first respondent filed the suit against respondent Nos.2 to 5-defendant Nos.1 to 4 for specific performance of agreement of sale dated 06.5.2000. During the pendency of the suit, the petitioner, who is a third party to the suit, filed I.A.No.257 of 2016 under Order I Rule 10 of CPC to implead her as defendant No.5 in the suit. The first respondent filed counter *inter alia* contending that the petitioner is not necessary and proper party to the suit. Respondent Nos.2 to 5 filed counter supporting the version put-forth by the first respondent. The trial court, after affording reasonable opportunity to both the parties, arrived at the conclusion that the petitioner is not necessary and proper to the suit; consequently, dismissed the petition. Hence, the unsuccessful petitioner filed the present revision.

4. Learned counsel for the petitioner submitted that the petitioner being purchaser of the suit schedule property is necessary and proper party to the suit. He further submitted that the findings recorded by the trial Court are not sustainable either on facts or in law. ***Per contra***, learned counsel for the first

respondent submitted that the trial Court considered the material available on record, in right perspective, and dismissed the petition; therefore, there are no grounds to interfere with the impugned order.

5. Now, the point that arises for consideration is:

Whether there is any illegality, irregularity or impropriety in the impugned order, which warrants interference of this Court?

6. The facts, which are relevant for disposal of this revision, are, in a nutshell, as follows: The second respondent, who was the owner of the suit schedule property, executed gift-cum-settlement deed on 27.1.2009 in favour of respondent No.4. Respondent No.4 executed General Power of Attorney-cum-agreement of sale dated 05.2.2009 in favour of respondent No.5 in respect of the suit schedule property. Respondent No.5 in turn sold the suit schedule property in favour of the petitioner under a registered sale deed dated 05.5.2011. The petitioner filed O.S.No.156 of 2012 against the first respondent seeking perpetual injunction in respect of the suit schedule property alleging that the first respondent is interfering with the suit schedule property. The first respondent filed written statement in O.S.No.156 of 2012 claiming that respondent No.4 executed agreement of sale in his favour.

7. The property, as mentioned in GPA-cum-agreement of sale, sale deed, the agreement of sale, the suit schedule property in O.S.No.156 of 2012 and the suit schedule property in the present suit i.e., O.S.No.23 of 2010, is one and the same. A perusal of the record *prima facie* reveals that second respondent executed settlement deed in favour of respondent No.4 on 27.1.2009 i.e.,

prior to filing of O.S.No.23 of 2010. The petitioner is also claiming the suit schedule property basing on the sale deed. While deciding the interlocutory applications, the Court shall restrain itself from expressing any opinion affecting the rights of the parties to the proceedings. If this Court expresses any opinion as to the validity or otherwise of the GPA-cum-agreement of sale or sale deed, it may cause prejudice to one of the parties to the suit. The trial Court simply dismissed the petition on the ground that the petitioner is not a necessary or proper party to O.S.No.23 of 2010.

8. It is needless to say that a person, who is having any interest or semblance of interest in the subject matter of the suit, is entitled to come on record by taking aid of Order I Rule 10 of CPC. Whether the petitioner is owner of the suit schedule property or not, will be decided after full-fledged trial. The trial Court lost sight of that aspect. If ultimately, the suit is decreed in favour of first respondent, the petitioner has to join as one of the parties to the sale deed. Viewed from this angle also, even if the petition is allowed, the same may not cause any prejudice to the respondents. On the other hand, if the petition is allowed, the Court can put an end to the litigation once for all. If the petition is dismissed, it leads to multiplicity of litigation.

9. Taking into consideration the factual scenario of the case on hand, this Court is of considered view that it is a fit case to permit the petitioner to come on record as one of the defendant No.5 in O.S.No.23 of 2010 on the file of the Court of Senior Civil Judge, Kavali. If the impugned order is allowed to stand, it would certainly

amount to miscarriage of justice; therefore, it is liable to be set aside.

10. In the result, the civil revision petition is allowed, setting aside order dated 04.7.2017 passed in I.A.No.257 of 2016. Consequently I.A.No.257 of 2016 is allowed impleading the petitioner as defendant No.5 in O.S.No.23 of 2010 on the file of the Court of Senior Civil Judge, Kavali. Miscellaneous petitions if any pending in this revision petition shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 28.8.2018

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