

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REVISION PETITION No.1323 of 2018

ORDER:

This Civil Revision Petition is filed by the petitioner/plaintiff aggrieved by the order dated 28.11.2017 in I.A.No.713 of 2017 in O.S.No. 78 of 2016 passed by the learned Principal District Judge, Nalgonda, dismissing the petition filed by the petitioner/plaintiff under Order 1 Rule 10 r/w 151 CPC praying the Court to implead the proposed 5th respondent herein as 5th defendant in the suit.

2. The plaintiff filed O.S.No. 78 of 2016 against respondents 1 to 4/defendants 1 to 4 seeking specific performance of agreement of sale deed dated 7.1.2016 executed by them in favour of the plaintiff to sell the plaint schedule land. When the suit is pending, he filed I.A.No. 713 of 2017 seeking to add one Guntoju Nancharamma, who is the mother of defendants 1 to 4, as 5th defendant on the ground that defendants 1 to 4 along with proposed 5th defendant are the joint owners and possessors of the land admeasuring Ac. 5.31 guntas out of Ac. 8.00 in S.No. 214 situated at Pedda Kaparthy Village of Chityal Mandal, Nalgonda District, which is part of the suit property. After the death of the father of the defendants 1 to 4, the patta of the land was recorded in the name of the

proposed 5th defendant in the revenue records. It is further mentioned that in fact D1 to D4 along with proposed 5th defendant jointly offered to sell the agricultural dry land measuring Ac. 4.00 in Sy.No. 214 and he agreed to purchase the same at the rate of Rs. 4,80,000/- per acre and defendants 1 to 4 executed an agreement of sale dated 7.1.2016 in favour of plaintiff on receiving the part of sale consideration. At the time of execution of agreement to sell, the proposed 5th respondent was not available in the village and other defendants promised to bring their mother for execution of the registered sale deed. It is also the case of the petitioner that after filing of the suit, he paid an amount of Rs. 8,00,000/-; i.e., Rs. 6,00,000/- in cash and Rs. 2,00,000/- through cheque bearing No. 000183 dated 7.12.2016 drawn on Andhra Bank, Balanagar, Hyderabad to defendant Nos. 1 & 2 and proposed 5th defendant and they issued a receipt dated 7.12.2016 acknowledging the receipt of the amount in the presence of K. Venugopal Reddy and N. Vijayapal Reddy. Thereafter, on 15.12.2016, the petitioner transferred a sum of Rs. 2,00,000/- to the bank account of defendant No. 1. Due to these facts, though the proposed 5th defendant was not a party to the agreement of sale dated 7.1.2016, still she is a necessary party to the suit and therefore, the petitioner proposed to add her as 5th defendant in the suit and sought relief against her also.

3. The proposed 5th defendant opposed the petition by denying the petition averments.

4. The trial Court under the impugned order dismissed the petition on the main observation that admittedly agreement to sell dated 7.1.2016 was executed by the defendants 1 to 4 and not by the proposed 5th defendant and in the legal notice dated 24.6.2016 issued by the plaintiff to defendant Nos. 1 to 4, there was no whisper of averment about the proposed 5th defendant. Hence, adding of 5th respondent as 5th defendant in the suit would amount to harassment and no purpose will be served. Hence, the present Civil Revision Petition.

5. Respondents 1 to 4 are shown as not necessary parties as they have not contested I.A.No. 713 of 2017 and only the 5th respondent/ proposed 5th defendant is shown as necessary party and hence notice of CRP was served on the 5th respondent. No representation on her behalf.

6. Heard Sri K. Mahipathi Rao, learned counsel appearing for petitioner/plaintiff.

7. Severely fulminating the impugned order, learned counsel for petitioner would submit that the suit schedule property is owned by the defendants 1 to 4 as well as their mother, the proposed 5th defendant and in fact, all of them agreed to sell the suit schedule land to the plaintiff but in view of the fact that the proposed 5th defendant was not readily

available at their house, defendants 1 to 4 executed an agreement to sell dated 7.1.2016 agreeing that they would bring their mother also for execution of the registered sale deed. Having believed their version, the petitioner obtained agreement to sell from defendants 1 to 4 only. Learned counsel would further submit that subsequent to the filing of the suit he paid an amount of Rs. 8,00,000/-; i.e., Rs. 6,00,000/- in cash and Rs. 2,00,000/- through cheque bearing No. 000183 dated 7.12.2016 drawn on Andhra Bank, Balanagar, Hyderabad to defendants 1 & 2 and proposed 5th respondent and obtained receipt dated 7.12.2016. His further submission is that subsequently, he transferred a sum of Rs. 2,00,000/- to the bank account of defendant No. 1 on 15.12.2016. In view of these transactions, learned counsel would argue, the trial Court ought to have added 5th defendant as necessary party but dismissed the petition only on the ground that she was not one of the parties to the agreement. Thus, prayed to allow the Civil Revision Petition.

8. *The point for consideration is whether there are merits in the Civil Revision Petition to allow?*

POINT:

9. Admittedly, defendants 1 to 4 alone are said to be the parties to the agreement to sell dated 7.1.2016. The proposed 5th defendant was not a party therein. However, the submission of learned counsel for petitioner

is that defendants 1 to 4 as well as the proposed 5th defendant are owners of the suit property and in fact, all of them agreed to sell the property to the petitioner and due to absence of the proposed 5th defendant in their village, the agreement was executed by the defendants 1 to 4 with an undertaking that they would get their mother also for execution of registered sale deed. Believing them, the petitioner obtained an agreement to sell from defendants 1 to 4 and since they have not executed the sale deed, he filed the suit and after filing of the suit also he paid Rs. 8,00,000/- to defendants 1 & 2 and proposed 5th defendant and obtained receipt dated 7.12.2016. A perusal of the copy of the receipt dated 7.12.2016 supports the version of the petitioner.

10. Under these circumstances, whether the proposed 5th defendant also agreed to execute the sale deed and whether she received part of the sale consideration along with defendants 1 & 2 and executed a receipt dated 7.12.2016 are the facts to be determined during the trial. It is also an issue as to whether the Court can direct a person who is not party to the agreement to execute the sale deed. In the considered view of this Court, the trial Court ought to have allowed the petition since the presence of the 5th defendant will help determine the suit in an effective manner and will avoid multiplicity of the proceedings.

11. Accordingly, the Civil Revision Petition is allowed by setting aside the order dated 28.11.2017 in I.A.No. 713 of 2017 in O.S.No. 78 of 2016 and consequently I.A. No. 713 of 2017 is allowed. There shall be no order as to costs.

As a sequel there to, miscellaneous applications, pending if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 20.08.2018
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