

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 1525 of 2018

ORDER:

- 1) Assailing the order, dated 09.01.2018 in I.A.No.274 of 2017 in O.S.No.850 of 2014 passed by the II Additional Senior Civil Judge, Kakinada, wherein petition filed under Order 1 Rule 10 and Section 151 of the Code of Civil Procedure (for short "the CPC) to add the petitioner/third party as 6th defendant in the suit is allowed, the present Revision came to be filed by the plaintiff under Article 227 of the Constitution of India.
- 2) For the sake of convenience, the parties hereinafter will be referred to as arrayed in the suit.
- 3) Originally, the plaintiff filed the suit O.S.No.850 of 2014 on the file of II Additional Senior Civil Judge, Kakinada, for declaration and recovery of possession against the respondents 2 to 5/defendants. After framing of the issues in the said suit, the petitioner/third party filed the present I.A.No.274 of 2017 to implead her as 6th defendant stating that she purchased the plaint schedule property under a registered sale deed dated 25.07.2015 vide Doc.No.8189/2015 for a valid consideration and ever since then she is in possession and enjoyment of the same. It is stated

that she came to know about the suit proceedings when the plaintiff came to the schedule property along with police and tried to interfere with her possession and enjoyment. It is stated that on enquiry she came to know that the plaintiff filed the suit with false averments. Her enquiries also confirm that her vendors got valid title and the said property was also delivered to her on 25.07.2015.

4) The plaintiff filed counter denying the averments made in the petition, stating that initially he filed O.S.No.26 of 2011 on the file of I Additional Junior Civil Judge, Kakinada against the respondents 2 to 6 for permanent injunction. It is stated that subsequent to the said suit, when the defendants 2 to 5 trespassed into the schedule property, the relief in the said suit got converted from mere injunction to declaration, recovery of possession and mandatory injunction. As such, the said suit was made over to Senior Civil Judge's court on point of pecuniary jurisdiction. While the matter stood thus, the present petition is filed to implead the petitioner as 6th defendant, basing on the sale deed, dated 25.07.2015, which is said to have been executed by Panthadi Ramani, who is the General Power of Attorney holder of 5th defendant. After the demise of 5th respondent i.e., on 19.07.2014, the 6th defendant was added as legal-heir of the 5th defendant. It

is said that by the date of alleged sale deed, the principal/5th defendant died and therefore, the GPA holder cannot convey the property in favour of the petitioner/third party. It is submitted that the alleged sale deed is void document and it cannot be considered either on fact or on the law. Therefore, urged that the petitioner has no right, title or interest over the schedule property. It is submitted that the defendants 2 to 6 and the petitioner/third party colluded together to defraud the right of the plaintiff, created fictitious documents.

5) After perusal of the petition and counter and after hearing both the sides, the trial court allowed the I.A. Challenging the same, the plaintiff filed the present Writ Petition.

6) The issue that arise for consideration is; "Whether the first respondent/third party herein can be impleaded as 6th defendant in the suit?"

7) Admittedly, the plaintiff has filed the suit for declaration and in a suit for declaration of title, the plaintiff has to succeed on his own strength. Now, the first respondent/third party has filed the present application under Order 1 Rule 10 and Section 151 CPC to come on record, on the ground that she has purchased the plaintiff schedule property from the 4th defendant. But, as seen from the averments of the plaint, the 4th defendant himself has no right

over the plaint schedule property as the General Power of Attorney made in favour of 4th defendant was itself in dispute. However, it is the suit of plaintiff and the plaintiff has every right to choose the parties to sue as well as Forum, and he cannot compel to fight against a party, against whom he does not seek any relief as held by Apex Court and this Court in **Chaganti Lakshmi Rajyam and others v. Kolla Rama Rao**¹; **Anil Kumar Singh v. Shivnath Mishra alias Gadasu Guru**²; **Bank of Rajasthan Ltd., Bangalore v. Transocean Bulk Carriers Ltd., and others**³ and the same view was reiterated by the Apex Court in **Kasthuri v. Iyyamperumal and others**⁴.

8) Further, a perusal of the record would disclose that the plaintiff has filed the suit for declaration of the title and also to declare that the sale agreement-cum-G.P.A. dated 01.07.2008 executed in favour of the first defendant and the subsequent documents executed in favour of D-2 to D-4 as void and that the defendants 2 to 4 have no right to execute the document in favour of the first defendant. However, since it is a suit, for declaration it is for the plaintiff to succeed in title over the suit schedule property by adducing evidence but the third party, who has filed

¹ 1998(1) ALT 621 (DB)

² (1995)3 SCC 147

³ AIR 1999 Madras 105 (DB)

⁴ (2005)6 SCC 733

the present I.A alleges that she has title as she purchased the suit schedule property from the 4th defendant. It is also disclosed from the plaint averments that the plaintiff has filed the suit for declaration and also to declare the sale agreement-cum-GPA dated 01.07.2008 executed in favour of first defendant and subsequent document in favour of D-2 to D-4 as void which clearly reveals that the sale deed executed in favour of the third party by virtue of sale agreement-cum-General Power of Attorney dated 01.07.2008, itself is questioned in the present suit. Any transfer through agreement of sale-cum-General Power of Attorney is not a valid transfer under Sections 54 and 55 of Transfer of Property Act as held by the Apex Court in **Suraj Lamp and Industries Private Limited v. State of Haryana and another⁵**, which however is required to be decided during the trial.

9) In view of the law laid down by this Court and as well as the Apex Court in the judgments referred to above and the findings arrived at in the said judgments, in my considered view, the first respondent herein cannot be impleaded as 6th defendant in the suit and as such the order of the trial court warrants interference.

10) Accordingly, the Civil Revision Petition is allowed setting aside the order dated 09.01.2018 in I.A.No.274 of 2017 in

⁵ 2012(1) ALD page 92 SC

O.S.No.850 of 2014 passed by the II Additional Senior Civil Judge, Kakinada. There shall be no order as to costs. As a sequel to it, miscellaneous petitions pending if any in this C.R.P. shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt: 03.10.2018

GM

