

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION NO. 5543 OF 2015

ORDER:-

This revision is filed against the order, dated 19-12-2014 passed in I.A.No.1249 of 2014 in O.S.No.45 of 2014 on the file of the court of Principal District Judge, Khammam.

2. Suit, O.S.No.45 of 2014, is filed for a specific performance of an agreement of sale. The suit was pending adjudication between the plaintiffs and the respondents therein. While so, I.A.No.1249 of 2014 was filed by the present revision petitioner as a petitioner in the lower court. It is her contention that she also has an agreement of sale in her favour for a part of the property and she prays that she should be impleaded as a party to the proceedings. A counter-affidavit was filed in the I.A and application was opposed. The lower court after hearing both the learned counsel passed the impugned order.

3. The petitioner admittedly is a third party. She and others wish to join as defendant Nos.3 to 7 in the suit. The lower court noted the submission of the learned counsel for the plaintiffs in the lower court, viz., Respondent Nos.1 and 2 herein, that the suit is filed for specific performance. Therefore, the contention is that the suit can be disposed of

by deciding whether there is an agreement of sale and whether readiness and willing is proved. The learned counsel points out that the suit can be decreed or dismissed depending on the proof of necessary ingredients and the presence of the applicants is not necessary.

4. Respondent Nos.7 and 8 in the suit have also filed O.S.No.67 of 2013 seeking a relief of specific performance of agreement of sale, dated.13-09-2008. However, as rightly noticed by the court below, the claim of the parties stands on a different cause of action. One cause of action is based upon agreement of sale, dated.13-09-2008, and the other cause of action is based upon agreement of sale, dated.11-07-2013.

5. It is settled law that a party can be added as a party to the proceedings only if he/she is a necessary party. A necessary party is one without whose presence the *lis* cannot be disposed off.

6. The contention of the learned counsel for the petitioner is that his client has an interest in the property and that she should be added as a party to the suit. As per the *proviso* to Section 54 of the Transfer of Property Act,1882, an agreement of sale does not create any interest. It is only capable of being enforced and till it is actually enforced and a decree results there from a party

cannot claim to have any interest in the property. In addition, the test of being a necessary party is an important test for impleading a person. This court is of the opinion that O.S.No.45 of 2014 can be heard and disposed of without the presence of proposed party/petitioners. If the parties have a claim or interest in the property, it is for them to work out their remedies independently.

7. This court finds no reason to interfere with the impugned order. In the opinion of this court, the impugned order is a reasoned order passed after considering the correct legal and factual aspects.

Accordingly, the Civil Revision Petition is dismissed. No costs. Miscellaneous Petitions pending, if any, shall stand closed in consequence.

03-10-2018
TSNR

D.V.S.S.SOMAYAJULU,J