

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.5079 & 5632 of 2017

COMMON ORDER:

The revision petitioner in both the revisions by name R.Jhansilaxmi Bhai is the plaintiff in O.S.No.25 of 2001. The revision respondent Nos.1 to 5 are defendant Nos.1 to 5 and respondent Nos.6 to 39 are the proposed parties to the suit as co-defendants. Among respondent Nos.1 to 5/defendant Nos.1 to 5, 1st defendant died and defendant Nos.4 & 5 are the legal representatives on record. In both the revisions, respondent Nos.1 to 5/defendant Nos.1 to 5 are endorsed as not necessary parties.

2. The suit O.S.No.25 of 2001 was filed against the defendant Nos.1 to 5 by the sole plaintiff for the relief of specific performance of the contract for sale dated 01.01.1986 for a total extent of Ac.13.12 gts in different survey numbers. The claim in nutshell in the suit is that one Md. Ibrahim of Nandipet Village and Mandal, Nizamabad District, was the sole pattadar as owner and possessor of the said agricultural land of Ac.13.12 gts which are shown in red colour of the map enclosed to the plaint by mentioning the old and new survey numbers in co-relation to it referred in the plaint and said Md. Ibrahim died in 1979 leaving behind son and 3 daughters by names Md. Ismail, Salma Begum, Ameena Begum and Rabia Begum, of whom Ameena Begum is the 1st defendant, Rabia Begum is the 2nd defendant and Reshma Bee, 3rd defendant, is the daughter of Md. Ismail S/o Md. Ibrahim. The suit was filed originally against them. Md. Ismail son of Md. Ibrahim was managing the properties on behalf of him

and his 3 sisters from their authorization to him to act on their behalf and therefrom suit lands mutated in the name of Md. Ismail in the revenue records and panchayat records. The plaintiff R.Jhansilaxmi Bhai, defendant Nos.4 to 6 supra namely Surapaneni Swarna Kumari, Gaddipati Jaya Laxmi and Nuthulapati Rama Mani constituted a partnership firm with the name and style of Ravella Jhansi Laxmi Bai & Others on 01.08.1985 covered by partnership deed and said firm approached Md. Ismail and his GPA holder Gaddam Ganga Reddy to purchase the suit lands, for the firm real estate business and after negotiation to sell at Rs.78,000/- per acre subject to measurement of the total extent of Ac.13.12 gts. Plaintiff firm paid Rs.50,000/- as earnest money to Ismail represented by his GPA and 3 sisters of Ismail on 01.01.1986 when there was an agreement obtained signed by GPA of Ismail and his 3 sisters. The plaintiff and the 4th defendant, the partners of the firm also signed. The total sale consideration is Rs.10,37,400/-, out of it besides Rs.50,000/- paid supra on 01.01.1986 date of agreement, paid again Rs.50,000/- on 13.02.1986 to the GPA of Ismail, who passed receipt. While so, in the 1st week of May 1986, Ismail, his GPA Ganga Reddy and plaintiff's firm cause measured the lands and found no part of suit lands are abutting to the public road and it revealed that it is difficult from those lands to approach the public road and when questioned Ismail and his GPA about the same they want to provide way at their expenses by finding a solution and arrived at a conclusion of Ismail should waive Clauses 3(a)(b)(c), 7 & 8 of the sale agreement and deliver possession of the land to the plaintiff's firm by receiving

Rs.1,50,000/- cash towards sale consideration and waived claim of 3 road side plots, one acre of land in middle of the suit lands and claim of interest on balance amount from the sale agreement terms and thereby a supplemental agreement executed by Ismail through his GPA on 18.05.1986 in favour of plaintiff's firm by deleting the original agreement Clauses 3(a)(b)(c), 7 & 8 and therefrom plaintiff's firm came into possession of the property pursuant to the agreement and the plaintiff was also permitted to lay roads and make plots to sell by their agreeing to execute sale deed in favour of the plaintiff's firm or the nominees and the Ismail's GPA Ganga Reddy in the supplemental agreement also mentioned the said terms and conditions of the other and the acknowledging receipt of Rs.1,50,000/- and to lay out the plots of the land to sell to different persons. Consequently plaintiff's firm obtained lay out permission from the panchayat and for major portion of the lands since plaintiff firm in possession of the property pursuant to the agreement and supplemental agreement and as per the lay out approval plots divided by spending huge amounts about Rs.4,00,000/- in developing the layout. Plaintiff's firm paid sale consideration of Rs.4,70,000/- to Ismail or his GPA and 1st defendant covered by receipts which are discovered in Para 10 of the plaint and the plaintiff's firm started sale of plots from January 1992 and sold 16 plots to 14 persons through Md. Ismail whose names are described in Para 12 of the plaint and Md. Ismail executed sale deeds in their favour having received sale consideration for the 16 plots of Rs.3,08,400/- and Ismail also executed 6 more sale deeds to the 6 nominees of the plaintiff firm on 28.12.1996 for Rs.1,26,000/- whose names described in

Para 16 of the plaint. However later said Ismail avoided to register said 6 sale deeds with pretend of ill-health to attend Sub Registrar Office with a say of Registrar to come to his residence at Nandipet and Sub Registrar issued commission and attended the house of Ismail at Nandipet, but he avoided to register the sale deeds though received consideration under the 6 sale deeds executed on required stamp and the vendees put in possession of the respective plots. Md. Ismail or his GPA and 1st defendant among other sisters in all received about Rs.9,04,400/- till 28.12.1996 from plaintiff's firm out of total sale consideration of Rs.10,37,400/- for the Ac.13.12 gts and only balance of Rs.1,33,000/- payable to them. Later plaintiff's firm was dissolved on 01.01.1998 and as per terms of the dissolution and distribution of the firm properties and assets, the plaintiff became entitled to all rights and liabilities and obligations covered by the suit sale agreement supra. Thereby entitled to maintain suit claim and consequently filed the suit and the other partners are proforma defendants 4 to 6 of the suit. Md. Ismail died on 30.06.1999 and he is survived by his daughter Reshma Bee, the 3rd defendant who is thereby added in the suit, being minor represented by next friend and guardian the 1st defendant, sister of Ismail as living with her in her care and guardianship. Out of 3 sisters of Ismail, Salma Bee is also died issue less. Thereby the suit filed against 3 defendants by saying defendant Nos.4 to 6 partners of the dissolved firm with plaintiff and as per the dissolution plaintiff is also entitled to enforcement of contract for sale. Plaintiff by expressing ready and willingness even demanding defendant Nos.1 to 3 are postponing. The plaintiff

also earlier issued paper publication in Eenadu daily on 10.08.1998 for which Ismail issued reply on 23.08.1998 falsely in his lifetime. The plaintiff issued notice dated 26.07.1999 to defendant Nos.1 to 3 and but for the 1st defendant, other two refused to reply. In the notice instead of Rs.1,50,000/- on typographic mistake of Rs.1,00,000/- from which a supplemental notice dated 02.08.1999 issued which the defendant Nos.1 to 3 refused to receive. The reply of 1st defendant dated 23.08.1999 to the plaintiff's advocate while admitting the suit transaction in part and denying the remaining contents and said reply is nothing but false so also the claim of Ibrahim gifted Ac.1.31 gts in S.No.685/2 to 1st defendant and got mutated her name, leave about she is also party to the sale agreement and bound to submit the reliefs thereunder to enforce the contract. The denial of receipt of consideration for the 6 sale deeds supra is nothing but false with dishonest intention as defendant Nos.1 to 3 despite said demands failed to execute sale agreement and the plaintiff filed the suit from accrual of cause of action for the specific performance of the contract for sale.

3. The defendant Nos.1 to 3 filed written statement and denied the plaint averments. The suit itself is under contest. It is while so, I.A.No.871 of 2017 is filed by 34 petitioners who are third parties want to come on record as proposed defendant Nos.6 to 39.

4. The averments in support of their affidavit petition for impleadment filed by Ahmed Khan for and on behalf of the others of the petition to implead are that they purchased among others, plots in S.No.685/1 to 5, 686/5 of Nandipet. The suit claim is for

Ac.13.08 gts the total extent of land of Ismial family is about 20 acres, for Ac.6.32 gts as per Kharij Khata the land remaining there is no contract for sale covered by the suit claim. Ismail filed O.S.No.273 of 1981 in District Munsif Court, Nizamabad and obtained declaration by deleting Kharij Khata vide judgment dated 27.03.1989. Ismail legal heirs approached MRO to implement the judgment dated 27.03.1989 and the names were entered in revenue records despite the plaintiff in the present suit O.S.No.25 of 2001 objected including by revision before Joint Collector that was remanded to the Tahsildar in proceedings No.D2/1761/2015 dated 10.08.2016 and Ismail family and the legal heirs developed the land into house sites and sold to various persons including to the proposed impleaded petitioners who obtained permission of Panchayat and NOC obtained from revenue authorities, also constructed house in same and paying property tax to the Panchayat. The proposed petitioners earlier filed WPs in High Court for their impleadment in the suit and thereby they are seeking to implead them. The plaintiff opposed the petition by reiterating the plaint averments practically referred supra and also by saying pending suit in I.A.No.1176 of 2003 plaintiff obtained status quo order and the same is in force. The lower Court from the rival contentions in the implead petition by the impugned order dated 07.09.2017 allowed to implead them saying it is their claim of they purchased the plots from the legal heirs and sisters of late Ismail in respect of part of suit property and constructed house by pursuant to the purchase with panchayat permission and the plaintiff is trying to dismantle the house constructed by them which made them to file WP that was

allowed from their impleadment as defendants to the suit and a perusal of the W.P.Nos.23006, 23019, 23034, 23058 and 23059 of 2017 dated 27.07.2017 liberty is given to them to implead as co-defendants to the present suit O.S.No.25 of 2001 and contest the same in claiming their so called right through defendant Nos.1 to 3 in the suit. As such, the Court is of the considered view they are to be impleaded in the suit.

5. The revision maintained in CRP.No.5079 of 2017 impugning the same is with contentions that the impugned order of the lower Court in impleading the third parties as defendant Nos.6 to 39 at their application is unsustainable and illegal and that too at the belated stage of the suit is before pronouncement of judgment and it is only to procrastinate the litigation instead of dismissal by left open any remedies allowed the applications to implead despite status quo order in force in the suit on 28.04.2003. The so called purchase by the petitioners is contrary to it and said sales by defendant Nos.1 to 3 to the proposed defendants is illegal and the implead petitions are outcome of suppression of material facts. The giving of liberty in disposal of the writ petitions for the proposed defendants Nos.4, 29, 33, 24 & 21 no way enable others of them to come on record as of right, but for to decide the implead petition on own merits for there is no positive direction clearly to implead them that too when all the proposed parties in filing writ petitions and have no locus to come on record under the guise of some of them were given any liberty to file petitions apart from the same does not amount to direction to allow.

6. CRP.No.5632 of 2017 filed is by the selfsame plaintiff against the docket order of the trial Court in I.A.No.869 of 2017 which reads “in view of the judgment to be pronounced on 31.08.2017, it is not correct to grant time to file counter and thereby petition is allowed that I.A.No.869 of 2017 filed by said Ahmed Khan to reopen the case and permit to implead them as defendant Nos.6 to 39 to the suit and to pass such other just orders”.

7. The counter filed by said Ahmed, the deponent to the implead petition and the suit reopen petitions filed with the implead petition of the suit at the stage of judgment to pronounce to say at fagend; is that the lower Court's order is legal and correct and for this Court while sitting in revision there is nothing to interfere and they are proper parties to the lis. The counter in opposing the revisions is nothing but repetition of the affidavit averments of the implead petition.

8. In the course of hearing the revisions, the respective counsel reiterated their respective contentions.

9. This Court while entertaining the revision, in CRP.No.5079 of 2017 granted stay of all further proceedings in O.S.No.25 of 2001 supra for a limited time that is extended from time to time and ultimately from hearing of the matter until further orders on 13.11.2017. The interim order of this Court granted on 13.10.2017 extended later until further orders supra, reads that:

“As could be seen from the case of history generated, the matter was reserved and, in fact, judgment ought to be pronounced on 24.08.2017. But, it appears, the learned trail

judge was busy in dictation of another suit and appeal and could not prepare the judgment in the present suit and has given the date as 31.08.2017 and meanwhile, I.A.Nos.871 & 872 of 2017 filed by proposed parties for impleadment as co-defendants to the suit and to reopen. But, the order was passed in implead petition in I.A.No.871 of 2017 only saying in the penultimate paragraph as the order under challenge, to expedite the progress of the case and to curtail the delay, issuance of summons to proposed parties is dispensed with. As such, the counsel representing the proposed parties are directed to file written statement after impleading the proposed parties in the array of defendants, within a period of one month, which indicates a direction to file written statement within time limit given and by necessary implication in I.A.No.872 of 2017 is to reopen also answered thereby and hence there shall be stay of all further proceedings.”

10. Heard and perused the material on record.

11. In the suit for specific performance of contract for sale the plaintiff's entitlement to the relief depends upon several factors. No doubt the suit under contest by defendant Nos.1 to 3 of whom 1st defendant died and defendant Nos.4 & 5 brought on record, the matter ripened for pronouncement of judgment. It is when the matter posted for judgment as referred supra the implead petition by the proposed defendant Nos.6 to 39 sought for with a claim that they purchased from defendant Nos.1 to 5 or others of the family some of the plots in survey Nos.685/1 to 5 and 686/5. In fact the plaint schedule property of Ac.13.12 gts is in the said old survey Nos.685/1 to 5 and 686/5. The claim in the implead petition is total extent as 20 acres and the plaint

schedule is if at all therefrom Ac.13.12 gts. However it is the case of the proposed implead petitioners as defendant Nos.6 to 39 in the affidavit of proposed 6th defendant referred supra that Ismail father of 3rd defendant and brother of defendant Nos.1 & 2 filed earlier O.S.No.273 of 1981 in District Munsif Court, Nizamabad for declaration to delete Kharij Khata noting for Ac.6.32 gts. The proposed so called purchasers to what extent in which survey number if any co-relating to what plot not mentioned much less by giving a list of the details and particulars even to consider who out of them purchased what extent covering to which part of the plaint described properties. The plaintiff obtained status quo order with claim of agreement with possession. Subsequent to the plaintiff's sale agreement if at all there were alienations in favour of any of the proposed parties for any of the portion of the plaint schedule, to put an end to the lis to avoid multiplicity of litigations, the implead petitions can be allowed, but for bereft of particulars required even to consider based on the principle if at all not as necessary parties at least as proper parties. However once that aspect crucial for deciding the implead petitions is missing, the mechanical allowing by the lower Court is unsustainable including from any observation of dismissal of the writ petition of some of the parties saying remedy is to seek impleadment in their claiming through defendant Nos.1 to 3. Said observation is no doubt pursuant to the Order 22 Rule 10 and Order 1 Rule 10 CPC and Section 52 of TP Act where the present plaintiff shown as party or not to the writ petition not clear for no orders even filed and such a fact not pleaded by any party nor the order of the lower Court reflects anything.

12. Needless to say in a suit for specific performance of the contract for sale even a decree passed for specific performance it is for all purposes a preliminary decree in nature and a further decree can be passed by working out the rights.

13. Having regard to the above and considering the scope of the lis, stage of the lis, the impleadment of the proposed 34 defendants as defendant Nos.6 to 39 and reopening of the matter by receiving of the written statements and putting the clock back for denovo trial with all opportunity for rejoinder to the plaintiff and others for additional written statements if any of the defendants on record will give unnecessary second round of life to the litigation that too without deciding whether plaintiff entitled to the relief of specific performance of the contract for sale or not such an ordeal is not necessary if at all not entitled to the main relief, but for if at all entitled to the main relief to consider any claim if at all bonafide purchasers for consideration subject to satisfying of no knowledge of the suit lis and the sale agreement irrespective of the constructive or deemed notice under Section 3 of TP Act from pendency of suit leave apart even the defendants in their written statement did not whisper about any alienation and it is not known in any of their evidence during trial of suit in O.S.No.25 of 2001 such alienation for any part of the suit property in favour of any of the proposed defendants deposed or not.

14. Having regard to the above, the order of the lower Court covered by both revisions is to be set aside by dismissing the 2 applications, however without prejudice to their right in the event of the suit for specific performance decreed, to pass a preliminary

decree and after said preliminary decree for the plaintiff to apply for final decree and there any claim in relation to the portion of the properties from any of the proposed defendants to adjudicate such claims.

15. Accordingly and in the result and subject to above observations, both the Civil Revision Petitions are allowed dismissing the implead petitions and without prejudice to the right to workout after disposal of the suit in the event of any passing of preliminary decree in the final decree with any claim therein.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

Date: 31.01.2018
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JUSTICE Dr. B.SIVA SANKARA RAO

