

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

Civil Revision Petition No.1894 of 2017

ORDER

The revision petitioner is the plaintiff in O.S.No.97 of 2004 on the file of the III Addl. District Judge, Guntur. She filed the suit for specific performance of contract for sale dt.26.02.1985 directing D.1 to D.13 to execute and register a proper sale deed in favour of plaintiff after receiving sum of Rs.1,000/- deposited in the court conveying items 1 and 2 of plaint schedule property to plaintiff, and also directing the D.1 to D.6 to execute proper sale deed in favour of the plaintiff conveying items 3 and 4 of plaint schedule property and register the same at the expense of the plaintiff within time to be fixed by the Court and on their default for the Court to do the same; and for permanent injunction restraining D.1 to 13 and their men and others from interfering with the plaintiff's peaceful possession and enjoyment of the schedule property and for costs and other releifs.

2. During pendency of the suit, the plaintiff filed I.A.No.410 of 2016 U/ O.1 Rule 10(2) CPC, for striking out D.6 to D.13 in the suit as not necessary and proper parties with the averments in the affidavit that she filed suit for specific performance of contract for sale against D.1 to D.5 but D.6 to D.13 are added as necessary and proper parties to the suit proceedings. The D.1 passed a resolution on 13.03.1977 to sell the landed properties at Guntur authorizing D.2 to D.5 and accordingly entered into an agreement of sale dt.18.07.1983 with the plaintiff and D.14 and D.15.

Subsequently supplemental agreement dt.26.02.1985 was executed by them by receiving total consideration except Rs.1,000/- from each party. Similar sale agreements as well as supplemental agreements are executed by the D.1 represented by D.2 to D.5 in favour of Bommidala Brothers Trust in respect of Ac.45-51cents and in favour of ST Society for Ac.21-27cents. Till today no registered sale deeds were executed by D.1 in favour of any of the agreement holders. While the matter stood thus, the D.6, without knowledge of authorized four Mahants-D.2 to D.5 under resolution dt.13.03.1977, registered some house sites of D.1 to third parties, being under the influence of one Mantri Narasimha Rao, a real estate businessman and executed Exs.B.23 and B.24 sale deeds in favour of D.7 to D.13 under the colour of tenancy, even though they are not declared as cultivating tenants at any point of time. The D.10 to D.13 are the name lenders of Mantri Narasimha Rao. The said documents Exs.B.23 and 24 are *void ab initio* and they are not binding on the plaintiff and the D.1. The plaintiff is willing to strike out the names of D.6 to D.13 as they are neither necessary nor proper parties under the grounds viz; 1) In the middle of the evidence, D.6 to D.13 brought into light another resolution No.8/ 1987,dt.21.09.1987 marked as Ex.B.34 in which no word was found regarding previous transactions entered according to resolution 11 of 1977 dt.13.03.1977, 2) Exs.A.1 and A.2 are signed by four Mahants relied by the plaintiff. Exs.B.23 and B.24 contained the signatures of five Mahan's relied by the D.6 to D.13. Both parties relied on

resolution 11 of 1977 dt.13.03.1977 but as per said resolution only 4 Mahan's were authorized with specific names, 3) The D.6 is Mahant of Guntur Branch which is not the party to the sale agreement dt.18.07.1983 and supplemental agreement dt.26.02.1985, thus the D.6 is not a necessary party, 4) As per resolution 11/ 1977, the D.1 authorized D.2 to D.5 for specific purpose of selling the lands at Guntur. In Exs.B.36 to B.38, there is no mention about the existence of resolution dt.8/1987. Exs.B.23 and B.24 are relating to agricultural lands. But there are houses and roads in the schedule property, and 5)the D.7 to D.13 are having void documents and so they need not register the sale deed along with the D.1 to D.5.

3. On the other hand, the 6<sup>th</sup> respondent/ D.6-Mahant Hanumandasji rep. at Guntur Branch Panchavat Akarabada Udaseen Nivan, Old Guntur, in the application supra filed counter contending that filing of the application by the plaintiff for striking out the names of D.6 to D.13, without amendment of the plaint for deleting the allegations against them after completion of entire trial, is nothing but to drag on the matter. The 9<sup>th</sup> respondent/ D.9 filed counter contending that this application is filed at a belated stage after hearing arguments on both sides and reserving the matter for judgment. The D.7 to 13 are subsequent purchasers and in a suit for specific performance, the subsequent purchasers are proper and necessary parties. The D.11 filed counter, which is adopted by D.10,D.12 and D.13, stating that they are the subsequent purchasers and all the defendants are

liable to execute registered sale deed and in the plaint the plaintiff claimed permanent injunction restraining all the defendants from interfering with the possession of the plaintiff and as per the plaint averments the main issue framed is whether the plaintiff is entitled to decree of specific performance against D.7 to D.13.

4. After hearing both sides, the trial Court held that in the plaint it is averred that the plaintiff obtained agreement of sale dt.18.07.1983 and also a supplemental agreement dt.26.02.1985 from D.1 to D.5 in respect of the schedule property and possession of the schedule property was also delivered to the plaintiff and thereafter one N.Venkateswarlu who is the father of the D.7 to D.9 filed ATC No.11 of 1984 claiming that he is a statutory tenant, but same was dismissed and ATA No.55 of 1991 filed by him was also dismissed by the District Court, Guntur and thereafter he preferred CRP No.5591 of 1999 before the High Court and the same was also dismissed and further averred that D.2 to D.5 brought into existence collusive and fraudulent sale deed dt.02.09.2004 in the names of D.7 to D.13 in respect of item Nos. 1 and 2 of the plaint schedule. When there is specific averments made by the plaintiff in the plaint to the effect that D.6 to 13 are the proper and necessary parties as they purchased part of the schedule property under fraudulent sale deeds, now the plaintiff without amending the plaint and without amending the relief claimed in the plaint, do not contend that the D.6 to D.13 are not proper and necessary parties and there is need to

strike out their names. Whether a person is a proper party or necessary party can be decided basing on the averments made in the plaint and also basing on the defence taken by the defendants and even as per the averments made in the plaint it is very clear that D.6 to D.13 are proper and necessary parties as they are holding certain sale deeds in respect of part of the schedule property, moreover, the plaintiff sought permanent injunction against D.6 to D.13 also and the trial Court dismissed the petition by its order dt.23.02.2017.

5. Impugning the said order, the plaintiff preferred the present revision with the contentions in the grounds of revision that the order is contrary to law, facts and circumstances of the case and the learned Judge ought to have seen that the plaintiff has discretion to add or delete parties by showing sufficient reasons for proper adjudication of the matter and there is no express prohibition against the plaintiff for striking out D.6 to D.13 in the suit U/O.1 Rule 10(2) CPC. The plaintiff has shown sufficient reasons and explained the circumstances in which the plaintiff is seeking for deletion of some of the defendants. The learned Judge ought to have seen, as mentioned in the affidavit, the plaintiff stated that the D.7 to D.13 who are having void documents are not necessary to restrict along with the D.1 to D.5. The learned Judge ought to have seen that since the suit is for specific performance in view of subsequent circumstances, the plaintiff is restricted her claim against remaining defendants only. Hence, to set aside the order impugned herein.

6. Heard both sides and perused the material on record.

7. Needless to go into the ultimate entitlement of the relief under a contract for sale for specific performance by the plaintiff against the D.1 to 5 in the presence of other defendants who are arrayed, now seeks their deletion which is the impugnement against the dismissal of the deletion sought for D.6 to D.13. A perusal of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act') particularly in relation to Maths and specific endowments attached thereto covered by Chapter-5 of the Act, from sections 47 to 55, as per Section 48 only Chapter-3 of the Act shall not apply to the Matt or the specific endowment attached thereto covered by the provisions of Sections 18 to 22, 25 and 28. It means, but for those provisions, the other provisions of the Act to apply and once such is the case for alienation of the immovable property as per Sections 80 and 81 of the Act any gift, sale, exchange or mortgage of immovable property belonging to or given or endowed for the purpose of any charitable and religious Institutions or Endowments shall be null and void unless any such transaction, not being a gift, is effected with the prior sanction of the Commissioner that too by tender-cum-public auction after considering objections and publishing the proposed transaction by the Commissioner and not by any private negotiations and sale and as the unauthorized sale contrary to the said provision is invalid and such person in position is deemed to be an encroacher

and consequently provisions of Sections 84 and 85 of the Act, shall apply.

8. This Court in the Secretary to Government and others Vs. Sri Swamy Ayyappa Cooperative Housing Societies Limited<sup>1</sup> in batch of Writ Appeals Nos.1769 of 2001 etc., held on 15.10.2003 that an institution founded by noble men, whose management was entrusted to a Trust Board, disappeared into thin air not on account of any onslaught and difficulties created by the strangers but on account of the death wish of those who were entrusted with the duty of managing the affairs of the Institution. The movable and immovable properties, worth crores of rupees, gathered by the noble men were parceled out to private buccaneers who masqueraded themselves as the trustees of the properties'. With these words and dealing with the factual matrix of the invalid alienations of the Gurukul Trust of Ghatkesar observed the whole operation of alienation of the land to the Trust commenced under the purported resolution passed by the Trust under the Presidentship of the then trustees and persons against the so called purchasers also initiated as encroachers under the Act, for the recent sale of the land, the President of the Trust did not confer any right, title or interest in purchasers and also referred G.O.Ms. No.703, dt.30.09.2000 declared all such transactions to be void and guidelines were issued in subsequent G.O.Ms.No. 405, Revenue (Endowments-II) Dept, dt.4-7-2002 for

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<sup>1</sup> (2003) 6 ALT 62

regularization of unauthorized encroachments without prejudice to the right of institutions to evict the encroachments and referred to Section 89 of the Act, conferring powers and jurisdiction upon the Commissioner of Endowments to pass an order directing the trustee or other person in charge of the management of the Institution or Endowment to enter into a compromise if the other party to a suit or other legal proceedings is willing to enter into a compromise under such terms and conditions which he considers acceptable in the interest of the institution or endowment, and inclined to leave remedies to approach the Commissioner of Endowments as well as Government for appropriate relief if any and with a direction meanwhile not to make any alienations and maintain existing status quo.

9. Leave it as it is of the relief for specific performance can be granted for private alienations covered by the so called transactions of the present lis, the alienees get any right as so called purchasers for consideration or prospective purchasers for specific performance as the case may be. The Apex Court in *Baluram Vs. P.Chellathangam*<sup>2</sup> held that in a case of Trust covered by the Trust Act, in a suit for specific performance even any beneficiary of Trust or a person having interest can be considered as a proper party for impleadment in such a suit to avoid multiplicity of proceedings. Thus, for this Court while

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<sup>2</sup> IV(2014) CLT 427 (SC)

sitting in revision, there is nothing to interfere with the impugned order herein of the trial Court.

10. Accordingly and in the result, the revision is dismissed by confirming the order of the lower Court in I.A.No.410 of 2016 dt.23.02.2017 in rejecting the application for deletion of the array of the respondents/ D.6 to D.13. The Trial Court also to consider the factual matrix in the necessity of impleading the Commissioner of Endowments as co-defendant/ party to the suit.

Consequently, miscellaneous petitions if any pending in this revision shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:22.01.2018.

Note:- Registry to mark the copy of order to the Principal Secretary, and the Commissioner, Endowments, State of Andhra Pradesh.

b/ o.  
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