

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3339 OF 2016

ORDER:

The present Civil Revision Petition under Article 227 of the Constitution of India is filed challenging the dismissal order dated 09.09.2016 in I.A.No.508 of 2016 in O.S.No.115 of 2014 passed by the Senior Civil Judge, Bapatla dismissing the petition filed under Order 1 Rule 10 C.P.C. negating the relief of impleading subsequent purchaser during pendency of the suit for perpetual injunction

2. The petitioners/plaintiffs filed suit for perpetual injunction restraining the respondents/defendants and their men, from removing the house roof portion shown as NOKL of the plaint plan and the joint walls between KL and NO portions and further direction to offer sale of IRBC portion shown in plaint schedule property for the same price mentioned in the sale deed dated 16.01.1958 on re-conveying the property covered by the said sale deed and for grant of perpetual injunction restraining the defendants from alienating any part of the property including IRBC of plaint plan.

3. The petitioners/plaintiffs filed petition to implead proposed parties i.e. respondent No. 8-Chopeperla Satish and respondent No.9-Chintalapudi Veera Satyavani in the suit on the ground that during pendency of the suit they purchased the property. The respondents including proposed parties filed counter denying the material allegations. It is alleged in the petition that the petitioners filed I.A.No.269 of 2015 for interim injunction against the respondents and that also filed I.A.No.271 of 2015 for appointment of advocate commissioner to note down the physical features of the house walls along with the suit. But the Court below did not consider the request of the petitioners in I.A.No.217 of 2015 and failed to protect the interest of the petitioners. As such the subsequent

purchasers are proper and necessary parties to the suit.

4. Before the Court below, counsel for respondents 1 to 7 reported no counter. Respondents 8 and 9 filed counter denying material allegations *inter alia* contending that they are not proper and necessary parties to the suit for bare injunction and they cannot be impleaded since the relief of permanent injunction is personal remedy against an individual and not against the petitioners and prayed to dismiss the petition.

5. The Court below upon hearing both counsel dismissed the petition on the principle laid down in **Sarvinder Singh v V.Dalip Singh**¹ in similar circumstances, the Apex Court held that in a suit for injunction, the subsequent purchaser of the property cannot be impleaded, since the transfer is hit by Section 52 of the Transfer of Property Act.

6. Aggrieved by the impugned order, the present revision is filed on the ground that the above principle cannot be applied to the present facts of the case since the petitioner claiming perpetual injunction against the defendants and their men from interfering with the schedule property and in view of Section 52 of the Transfer of Property Act subsequent purchaser cannot be decided, unless they are impleaded, it is difficult to prosecute the case against the 1st respondent as they ceased to be the owners of the property. Therefore, the Court below dismissed the petition on erroneous reasons.

7. During hearing, learned counsel for the petitioners mainly contended that in a suit for injunction, the subsequent events can be taken into consideration to decide the suit permitting the petitioners to bring subsequent purchasers by placing reliance of this Court in **Racharla Thirupathi and others v Gundala Shobha Rani and others**².

¹ 1996 Scale (6) 59

² 2013(5) ALD 566

8. Whereas, learned counsel for respondents 1 to 7 opposed the petition placing reliance on the principle laid down in **P.T.Choudary v Mohammed Abdul Basheet Khan and others**³ wherein this Court held that in a suit for injunction subsequent purchaser cannot be brought on record since the transaction between the defendant and the subsequent purchaser is hit by Section 52 of the Transfer of Property Act.

9. Similarly, learned counsel for respondents 8 and 9 also contended that they are not proper and necessary since the transaction is hit by Section 52 of the Transfer of Property Act and placed reliance of the Apex Court judgments in **Uddar Gagan Properties Limited v Sant Singh and others**⁴ and **Nadiminti Suryanarayana Murthy (died) through Legal Representatives v Kothurthi Krishna Bhaskara Rao and others**⁵ and requested to dismiss the petition leaving it open to work out their remedies in appropriate proceedings.

10. **The short question that falls for consideration is:**

Whether respondents 8 and 9 are proper and necessary parties to a suit for injunction simplicitor?

11. It is undisputed fact that the petitioners filed suit for various reliefs in the nature of perpetual injunction and mandatory injunction. During pendency of the suit, the defendants alienated the suit property to the proposed respondents 8 and 9. On account of subsequent events, the third party cannot be brought on record as defendants and placed reliance on the judgment of this Court in **P.T.Choudary's** case referred supra and in para 2 of the judgment, this Court considered the scope of Order 1 Rule 10 C.P.C. and subsequent sale of the property and concluded that the subsequent purchaser of the suit property in a suit for injunction can be added as plaintiff. The petitioners have relied on a judgment of this Court

³ 2007(2) ALD 675

⁴ (2016) 11 SCC 378

⁵ (2017) 9 SCC 622

in **Ramesh Chawla v N.Srihari and others** and in this judgment, the Single Judge relied on Judgment of the Apex Court in **Sarvinder Singh's case** referred supra. In similar circumstances, when the defendants had dealt with the property in a pending suit, the Apex Court on the basis of Section 52 of the Transfer of Property Act, it would therefore, be clear that the defendants in the suit were prohibited by operation of Section 52 to deal with the property and could not transfer or otherwise dealt with it in any way affecting the rights of the appellant except with the order or authority of the Court. Therefore, basing on the judgment of this Court, the third parties, who are subsequent purchasers cannot be added in a suit for injunction simplicitor.

12. Learned counsel for the petitioners relied on judgment of this Court in **Racherla Thirupathi's** case referred supra, dealt with similar application filed under Order I Rule 10 C.P.C and held that in a suit for permanent injunction to restrain respondents 2 to 5 from interfering with schedule property, the petitioners, though third parties to the suit, having regard to averments on which they filed application for their impleadment, it cannot be denied that they have direct interest in the subject matter of suit. As to what extent they have interest and whether respondent No.1/plaintiff is entitled to claim injunction or not, need to be examined in suit and subsequent purchasers are necessary parties to the suit, allowed the petition to avoid multiplicity of proceedings. The single Judge of this Court in **Ramesh Hiranand Kundanmal vs Municipal Corporation Of Greater Bombay and others**⁶ and **Udit Narain Singh. Malpaharia v. Addl. Member Board of Revenue, Bihar**⁷ where the Apex Court held while dealing with the petition under Order 1 Rule 10 (2) C.P.C. held that Order 1 Rule 10(2) C.P.C. conferred discretion on the Court at any stage of the proceedings, either upon or without the application of either party,

⁶ 1992(2) SCC 524

⁷ AIR 1963 SC 786

and on such terms as may appear to the Court to be just, order that the name of the party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectively and completely to adjudicate upon and settle all the questions involved in the suit, be added. Similar view was expressed by the Apex Court in **Mumbai International Airport Pvt. Ltd. v Regency Convention Centre and Hotels Pvt. Ltd and others**⁸. Thus, the principle laid down in the judgment that the proper or necessary party can be brought on record even in suit for specific performance, but it is not clear whether in suit for permanent injunction or not?

13. Learned counsel for the proposed party while supporting the contention of defendants 1 to 7 placed reliance on the judgments of the Apex Court in **Uddar Gagan Properties Limited's** case referred supra and **Nadiminti Suryanarayan Murthy's** case referred supra. The Apex Court in **Uddar Gagan Properties Limited's** case referred supra at para 29, considered the scope of Order I Rule 10 C.P.C and held that any subsequent transitions entered into by the builder cannot be taken into account and are hit by the principle of *lis pendens*. In any case, it was for the builder to inform the third parties to whom the plots have been sold, that the land was under litigation. If the third parties have purchased the land knowing fully about the litigation, they have clearly taken risk and their remedy will be only against the builder. If pendency of litigation was suppressed, the third parties can take their remedies against the builder. Without prejudice to their said private remedies, the Court may try to balance equities to the extent possible.

14. In **Nadiminti Suryanarayan Murthy's** case referred supra express

⁸ (2010) 7 SCC 417

similar view in para 32 as follows:

“It was brought to our notice that during the pendency of this litigation, some more transactions took place in relation to the suit house. Suffice, it to say, such transactions are directly hit by the principle of lis pendens, as contemplated under Section 52 of the T.P. Act and, therefore, it is of no consequence so far as this litigation is concerned. In other words, these transactions are not binding on the parties to the lis much less on the plaintiff. Such parties would be, therefore, at a liberty to now work out their inter se rights in accordance with law as a fall out of this judgment.”

15. The sum and substance of all the judgments relied on by the counsel for respondents referred above, in a suit for injunction, on account of subsequent event of sale of the property, during pendency of the suit, purchaser cannot be brought on record as such transaction is hit by Section 52 of the Transfer of Property Act and the person who purchased the property is bound by decree that may be passed against the predecessor in title. In such a case, they cannot be brought on record in a suit for bare injunction. However, contrary view is taken by the Single Judge of this Court, relied on other judgment, but they are indirectly on the issue.

16. As seen from the relief claimed in the petition, it consists of three different relief. The first one is to grant permanent injunction restraining the defendants 1 to 7 and their men from removing house roof portion shown as NOKL of the plaint plan and the joint walls between KL and NO portions. The other relief sought against defendants 1 to 5 to offer for sale of IRBC plaint plan to them for the same price mentioned in the sale deed dated 16.01.1958 and the third relief is to grant permanent injunction restraining the defendants from alienating any part of the schedule property including IRBC plaint plan to outsiders.

17. Out of three reliefs claimed in the suit, the 1st and 3rd reliefs are purely in the nature of perpetual injunction governed by Section 38 of the

Specific Relief Act and whereas, the other relief is in the nature of mandatory injunction to direct defendants 1 to 5 to offer for sale of IRDC portion shown in the plaint schedule to them for the same price mentioned in the sale deed dated 16.01.1958.

18. The judgments referred are pertains to injunction suit, but not mandatory injunction. Even if it is mandatory injunction, it makes no difference to apply the same principle. If for any reason, the suit is decreed against the original defendants, the subsequent purchases, i.e. defendants 8 and 9 are also bound by decree, in view of the doctrine of *lis pendense* under Section 52 of the Transfer of Property Act. Therefore, the third parties are not proper or necessary parties to the suit. But they are bound by decree that may be passed against their vendors and it is for the subsequent purchasers to work out their remedies in appropriate proceedings, in case of a decree is passed against their vendors, but they are not entitled to claim any equities in the present suit.

19. With the above observation, the civil revision petition is dismissed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending shall stand closed.

M. SATYANARAYANA MURTHY, J

12.11.2018
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