THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.3976 OF 2018

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, to set-aside the order dated 06.06.2018 in I.A.No.106 of 2018 in O.S.No.129 of 2011 passed by the Principal Senior Civil Judge, Kadapa, dismissing the application filed by the petitioners/plaintiffs filed under Order I Rule 10 CPC r/w Order VI Rule 17 CPC to implead the third respondent/proposed party.

The petitioners/plaintiffs filed O.S.No.129 of 2011 for declaration of their right and title over the suit schedule property and alternative relief of specific performance of agreement of sale dated 13.08.1974 against the respondents 1 & 2/defendants in O.S.No.129 of 2011. The petitioners/plaintiffs sought for impleadment of third party as third defendant on the ground that he filed a separate suit O.S.No.21 of 2011 pending on the file of Senior Civil Judge, Rajampet against the second defendant – Guduru Rojamani for specific performance of agreement of sale in respect of present suit schedule property and it is a collusive suit and that the suit is filed to defeat the legitimate claim of the petitioners/plaintiffs.

But, the Trial Court dismissed I.A.No.106 of 2018 assigning its own reasons. Aggrieved by the said order, the present civil revision petition is filed, on the ground that the proposed party/third respondent is a proper and necessary party to adjudicate the dispute completely and in whose absence, the *lis*

pending before the Court cannot be decided, and the Trial Court failed to consider the purpose of impleading the third respondent/proposed party, as the third defendant in the main suit and committed an error.

During hearing, learned counsel for the petitioners reiterated the contentions urged in the petition.

Admittedly, O.S.No.129 of 2011 was filed for declaration of their right and title over the suit schedule property and alternative relief of specific performance of agreement of sale dated 13.08.1974 against the respondents 1 & 2/defendants in O.S.No.129 of 2011 and the petitioners/plaintiffs sought for impleadment of third party as third defendant on the ground that, he filed a separate suit O.S.No.21 of 2011 on the file of Senior Civil Judge, Rajampet against the second defendant – Guduru Rojamani for specific performance of agreement of sale in respect of present suit schedule property. The decree in a suit for declaration is not binding the third party, in view of Section 35 of Specific Relief Act.

Section 35 of Specific Relief Act deals with effect of declaration and according to it, a declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of declaration, such parties would be trustees.

Therefore, whatever decree passed in the suit for declaration granting primary relief in the suit, will not bind the proposed party.

The other relief claimed in the suit is by way of alternative relief of specific performance of agreement of sale dated 13.08.1974 against the respondents 1 & 2 herein.

In a suit for specific performance, the rights of the parties to agreement alone will be decided, but not rights of a third party, except any other person who is claiming right as a subsequent purchaser without notice of the earlier or prior agreement, in view of Section 19 of Specific Relief Act and subsequent purchaser prior to filing of suit is a proper and necessary party to the suit. But, the third respondent/proposed party is not a purchaser subsequent to execution of agreement of sale and before filing the suit. But, the suit is filed on 06.04.2011, whereas, the proposed party is claiming specific performance based on agreement of sale dated 08.05.2007 from the second respondent. Therefore, in view of Section 19 of Specific Relief Act, the proposed party is proper and necessary party, unless he is impleaded as a defendant in the suit, the title, if any, vested on him cannot be divested and he shall also join in execution of regular sale deed in the event of obtaining any relief in a suit for specific performance pending on the file of Senior Civil Judge, Kadapa.

It is brought to the notice of this Court during hearing that the petitioner also filed a petition under Order I Rule 10 C.P.C in the other suit filed by respondent pending on the file of Rajampet Senior Civil Judge's Court and ended in dismissal and attained finality. In such case, the petitioner cannot claim such relief in the present suit, having lost his claim in the other suit.

To avoid conflicting judgments, it is appropriate to try both the suit by one of the Competent Court, in case both the suits are tried by one Court simultaneously impleadment of parties become unnecessary. Therefore, the petitioner may file appropriate petition under Section 24 C.P.C to withdraw anyone of the suits from the file of any of the courts for withdrawal and transfer to the other courts. Hence, leaving it open to the petitioner, the present petition is disposed of.

With the above direction, the civil revision petition is disposed of.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:24.08.2018

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