

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

C.R.P.NO.5199 OF 2015

ORDER:-

The revision petition is filed questioning the order, dated 28-09-2015, passed in I.A.No.2864 of 2013 in O.S.No.713 of 2008 on the file of the court of Chief Judge, City Civil Court, Hyderabad.

2. The suit O.S.No.713 of 2008 was filed for declaration and for perpetual injunction by the plaintiffs against the defendants therein who claim to have purchased the property through two sale deeds in January 1998.

3. After the suit was filed, the present application I.A.No.2864 of 2013 was moved under Order I Rule 10(2) C.P.C. by one V.Karuna Sagar seeking impleadment as a third party. According to the averments in the affidavit, he has a right over the property by virtue of a registered agreement of sale-cum-GPA executed by the 4th respondent/2nd defendant in his favour. He sought to come on record. The present revision petitioners opposed the application. However, the application was allowed by the impugned order, which is now questioned in this revision petition.

4. This court has heard Ms Manjiri S.Ganu, learned counsel for the petitioners and Sri Suresh Bhaktula, learned counsel for the respondents.

5. The learned counsel for the petitioners argues that the basic principle under Order I Rule 10(2) CPC is that a party should be a necessary party for an adjudication of a dispute. A necessary party is one without whom the suit cannot be decreed of at all. The learned counsel submits that the suit is filed for declaration against the defendants in the suit. Therefore, for agitating or an adjudication of her grievance against the defendants in the suit, the presence of the 1st respondent in the revision petition is not necessary. In addition, she also submits that the 1st respondent is merely an agreement of sale holder. She argues that agreement of sale does not create any interest in the property.

6. In addition, she also points out that the agreement of sale is not actually marked by the lower court and shows that in the appendix of evidence, no document is marked. She points out that, however in para.9 of the impugned order, the date of the agreement of sale under which the 1st respondent claims some interest is shown as 16-10-2008. Her contention is that application I.A.No.2864 of 2013 is filed in July 2013 and as the agreement of sale was not converted into a sale deed and the claim is barred by limitation. It is her contention that on the basis of the agreement of sale of the year 2008, the party cannot be

impleaded as a 3rd party. She relies upon a judgment of Punjab and Haryana High Court in *Harwant Singh vs. Smt.Guro and Ors*(¹) and also judgment of this court in *Taddi Chinnayya and Others vs. Tekumalla Purushottam Rao and Others*(²). Therefore, it is her contention that the petition is wrongly allowed.

7. In reply to this, the learned counsel for the respondents argues that the presence of the proposed party is necessary for an effective adjudication of the suit. He also argues that the petitioner has interest in the property and that because of his agreement of sale alone, the present suit came to be filed for declaration but without impleading the third party. The learned counsel for the respondents also relied upon a judgment of this court in *Smt.Mulakalavathy and Others vs. Suddala Narayana and Others*(³) and argues that the agreement of sale holder-cum-power of attorney holder is also a necessary party and that the presence of the third party is necessary for adjudication of the entire *lis* and to prevent the multiplicity of proceedings.

8. Now the point that arises for consideration is:-

Whether the lower court exercised its jurisdiction rightly or not?

¹ MANU/PH/0828/1998

² 2015(4) ALD 501

³ 2006(4) ALT 165

POINT:-

9. It is a settled principle of law that under Order I Rule 10 CPC, a party is to be added if he is a necessary party. A necessary party is one without whose presence the matter cannot be disposed of at all. For the purpose of passing an effective decree, the presence of the party should be necessary. In the judgment in *Harwant Singth (1st supra)* His Lordship Justice Swatanter Kumar, as he then was, clearly held that the basic principle that a necessary party is one in whose absence the court cannot effectively decide or determine the matter in controversy. In *Taddi Chinnayya and Others (2nd supra)*, a learned single judge of this court held that a mere agreement of sale will not confer any right of a party to implead himself and the learned judge also held that agreement of sale holder should file a suit for specific performance. The learned single judge also referred to Section 54 of the Transfer of Property Act to hold that a contract of agreement of sale does not confer any right or interest in the property.

10. This court after considering the averments of the parties and also the judgment relied upon by the learned counsel for then respondents is of the opinion that the remedy of the plaintiffs is misconceived. In the case before *Smt.Mulakalavathy and Others(3rd supra)* the power of attorney holder has already filed a plaint on behalf of the

three plaintiffs. He then sought to implead himself as a 4th plaintiff in the suit. In those circumstances, as three plaintiffs representing the interest are already on record, the GPA holder who signed the plaint on behalf of the other three plaintiffs wanted to come on record as a 4th plaintiff. In those circumstances, the court held that he, being the agreement of sale holder, can be joined as a 4th plaintiff to the suit. In the case on hand, it is also important to note that the proposed party is claiming title to the property through an agreement of sale-cum-GPA said to be executed in favour of the 4th respondent. The 4th respondent is wife of the 3rd respondent. The 3rd respondent in I.A.No.2864 of 2013 has filed a counter wherein he categorically stated that he did not execute the gift deed which is relied upon by the proposed party. In addition, it is also clear from a reading of the affidavit filed to implead the petitioner himself that the gift deed said to have been executed by the 3rd respondent in favour of the 4th respondent is an unregistered gift deed. The petitioner in his affidavit itself admits that the deed is unregistered and it is also to be validated on payment of the relevant stamp duty. Therefore, it is clear that the gift settlement deed, dated 20-07-1993 which forms basis for the petitioner's claim is an unregistered and unstamped document. The gift deed is also expressly denied by the so-called donor. In these

circumstances, it is apparent that the petitioner does not have any “interest in the property” that is capable of being decided in the present *lis*. In case the petitioner has any claim which is enforceable, his remedy is to file a suit for specific performance and for the other reliefs as he is so advised provided the same is within the period of limitation etc,. Even the learned single judge of this court in *Taddi Chinnayya(2nd supra)* also held to that effect only. In that view of the matter, this court is of the opinion that the petitioner does not cross the threshold or the initial test of being a necessary party. In his absence also, the suit can be decided between the parties to the litigation. Therefore, this court holds that as he is not a necessary party, the impugned order was passed incorrectly.

Hence, the Civil Revision Petition is allowed and the order, dated 28-09-2015 passed in I.A.No.2864 of 2013 in O.S.No.713 of 2008 by the Chief Judge, City Civil Court, Hyderabad is set aside. No costs. The interlocutory applications pending, if any, shall stand closed in consequence.

D.V.S.S.SOMAYAJULU,J

28-11-2018
TSNR