

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

Civil Revision Petition No.2091 of 2017

ORDER

The revision petitioners are the plaintiffs 1 to 11 in O.S.No.115 of 2010 on the file of the learned Senior Civil Judge, Anantapur. The suit is filed against 22 defendants of whom the D.1 to D.3 are viz: Government of Andhra Pradesh represented by the District Collector, Anantapur, Revenue Divisional Officer and Tahasildar, Anantapur and the others are unofficial defendants and the prayer in the plaint is to pass a decree in favour of the plaintiffs and against the defendants declaring that the plaintiffs are absolute owners of the suit property of Ac.5-09cents in Sy.No.30-1C Jarayati Dry of Kakkalapalli gram polam within Anantapur Municipality area and to evict D.4 to D.22 by D.1 to D.3 or else by Court through process of law and to grant such other reliefs.

2. The averments in the plaint show one Akaledu Chindambaramma, sold the plaint schedule property to Dandi Mohaboob Sab, by registered sale deed dated 03.09.1947 and put him in possession and enjoyment of the same. While he was so enjoying, he mortgaged the property to one Muthyalakka, by borrowed amount of Rs.400/- covered by mortgage deed dt.26.05.1953 and after that said Mohaboob Sab sold the property to said Muthyalakka and one Byachukar Mehaboob Sab jointly by sale deed,dt.07.01.1957 and put them in possession and enjoyment. on 09.04.1960 said Muthyalakka purchased the joint

half share from Dandi Mehaboob Sab, under document No.1377/ 60 and thereby said Muthyalakka is the absolute owner for the property and she in turn sold to Gonuguntla Naidu by registered sale deed dt.04.12.1960 and put him in possession who in turn sold to Raja Rangaiah under sale deed dt. 23.08.1961 and put him in possession and said Raja Rangaiah in turn sold to Gonuguntla Narayanappa under sale deed dt.22.04.1967 and put him in possession and enjoyment of the same. Said G.Narayanappa gifted an extent of Ac.2.50cents out of said property, to Gonuguntla Salama/ 11th plaintiff, who is wife of G.Naidu-brother of said Narayanappa, by registered gift deed dt.16.05.1985 within the boundaries described therein. Later said Narayanappa died 15 years back to the filing of the suit, leaving behind him the plaintiffs 1 to 10 and wife by name Gonuguntla Lakshamma and the property of Ac.2-59cents out of total Ac.5-09cents got mutated in the name of Lakshamma who obtained pattadar passbook and title deed as family elder and after death of said Lakshamma, the plaintiffs 1 to 10 being the legal heirs of Narayanappa and Lakshamma succeeded to the same and in possession and enjoyment. Salamma-the 11th plaintiff while in possession and enjoyment of the remaining Ac.2-50cents, the other plaintiffs are in possession of the remaining Ac.2-59cents. While so, D.4 to 22 with unsocial elements erected huts in the plaint schedule property and named as Mandla Subba Reddy Colony by proclaiming that Government promised to issue patta in their favour for the same though it is a private property of the

plaintiffs and unless and until the land is acquired by D.1 to 3- Government officials, they cannot allow the property as house-sites to unofficial D.4 to 22 and thereby the plaintiffs are entitled to the relief.

3. It is while so, the third party by name B.Siva Sankar Reddy, to come on record as D.23, filed I.A.No.320 of 2014 the implead application under O.1 Rule 10 CPC with the affidavit averments that he purchased Ac.1-47cents out of Ac.5.09cents in Sy.No.30/ 1C from Dandiya Khaja by registered sale deed dt.18.10.2001 and one Subhash Chandra Bose sold the remaining land under document No.1810/ 2001 and since the date of the purchase, he is in possession and enjoyment of the Ac.1-47cents out of Ac.5-09cents and the respondents 1 to 11 to the implead petition-the plaintiffs filed an appeal against him and K.Subhash Candra Bose, before the Joint Collector in R.C.No.5347 of 2009 and the matter was withdrawn later. The revenue authorities granted pattadar passbooks and title deeds in favour of him for Ac.1-09cents only. The respondents 1 to 11-the plaintiffs filed the present suit without adding him and as he came to know recently being a necessary and proper party to be impleaded.

4. The petition was opposed by the counter of the 1st plaintiff on behalf of the plaintiffs with contention of the averments are untrue and the claim is false and the proposed party or K.Subhash Chandra Bose, have no right much less their so called vendor Dandiya Khaja Bee and only the plaintiffs 1 to 11 are owners and thereby they sought declaration against the

defendants and the proposed defendant cannot come on record. The lower Court allowed the petition on 10.03.2017 with observations that the proposed D.23 who sought for impleadment is claiming right out of the plaint schedule property over an extent of Ac.1-47cents and to avoid multiplicity of proceedings, it is just to implead.

5. The same is impugned by the plaintiffs in maintaining the revision. Pending the revision the 1st petitioner/ 1st plaintiff died and his legal heirs brought on record as revision petitioners/ plaintiffs 12 to 14 by order dt.14.12.2017 in CRPMP No.8703 of 2017.

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

7. The plaintiffs are not claiming any relief against the proposed defendant. They are claiming the relief against the D.1 to D.22 with allegations of D.4 to 22 trespassed and raised huts and are to be dispossessed by declaring title of the plaintiffs over the property and to hand over possession to them. What the proposed party claims is he got right over the part of the property and he has to be impleaded to have a positive claim. Unless he claims any interest in the relief claimed by the plaintiffs from mere say that he got an independent right over the property that too when the plaintiffs are disputing about such right, he cannot come on record in the suit at this stage but for remedy is to file an independent suit and at best including against the present plaintiffs. The constitution Bench expression in Razia Begum Vs.

Sahebzadi Anwar Begum¹ placed reliance by proposed party no way applies to the facts apart from the proposition even otherwise not in dispute for the proposed party is not at all a necessary party and merely because he claims as a proper party at best, though the plaintiff is *dominus litis*, the Court got a discretion to implead any necessary and also any proper party at any stage of the proceedings, the factual matrix no way admits the discretion of the trial Court judiciously to implead.

8. With these observations, the revision is allowed by setting aside the order of the trial Court in I.A.No. 320 of 2014 in O.S.No.115 of 2010,dt.10.03.2017 with the above observations of the remedy of proposed party is to file an independent suit including against the plaintiffs for any portion of the plaint schedule property.

9. Consequently, miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:03.01.2018
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¹ AIR 1958 SC 886