

Civil Revision Petition No.4793 of 2018

Order:

This revision, under Article 227 of the Constitution of India, is preferred against the order passed by the XXVII Additional Chief Judge, City Civil Court, Hyderabad in I.A. No. 1066 of 2015 in O.S. No. 178 of 2014 dated 02.11.2017.

The petitioners herein filed O.S. No. 178 of 2014 for cancellation of the sale deed executed by them in favour of the 2nd respondent herein on grounds of fraud, coercion and misrepresentation. The subject flat was sold by the petitioners herein to the 2nd respondent on 24.6.2014. The 1st respondent herein filed I.A. No. 1066 of 2015 to implead him as the third defendant in the Suit contending that the subject property was mortgaged to him by the 2nd respondent; and both the parties had, intentionally, omitted to array him as a party in the suit because of collusion.

In the order under revision, the Court below noticed that the 2nd respondent herein had mortgaged the suit schedule property in favour of the 1st respondent on 25.7.2014, by document No. 1774 of 2014 registered in the office of the Sub-Registrar, Marredpally, and had obtained a loan for Rs. 40.00 lakhs. It held that the Suit as filed was not for specific performance, but was for cancellation of the sale deed; if, ultimately, a decree is passed the rights of the proposed party would be jeopardized; and the petitioner/proposed party was a necessary party to determine the inter-se rights of the parties.

It is not in dispute, nor has it been contended before this Court to the contrary, that, if the Suit were to be decreed and the

sale deed cancelled, the rights of the registered mortgagee (the 1st respondent herein and the petitioner in I.A. No. 1066 of 2015) would be adversely affected.

The petitioner herein would not suffer substantial prejudice or injury merely because the 1st respondent is impleaded as the third defendant in the Suit, since their claim for cancellation of the sale deed, on grounds of fraud, mis-representation and coercion by the 2nd respondent, would be adjudicated by the Court below on the basis of the evidence adduced before it.

Impleading the mortgagee as a defendant in the Suit, would enable the Court below to take into consideration the fact that the 2nd respondent herein had, subsequent to the sale deed being executed in his favour by the petitioners on 24.6.2014, mortgaged the suit schedule property, just a month thereafter on 25.7.2014; and also to examine the submissions put forth on behalf of the mortgagee. Save, substantial prejudice or injustice being caused to the petitioners herein or the order under revision suffering from a patent illegality, no interference is called for in proceedings under Article 227 of the Constitution of India. I see no such infirmity in the order under revision.

The Civil Revision Petition fails and is, accordingly, dismissed. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

RAMESH RANGANATHAN, J

Date: 31st August, 2018

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