

HONOURABLE SRI JUSTICE N. BALAYOGI
CIVIL REVISION PETITION No.4010 of 2012

ORDER:

This Civil Revision Petition is filed by the petitioner aggrieved by the decree and order dated:4.6.2012 passed in I.A.No.1225 of 2011 in O.S.No.2724 of 2010 on the file of the learned I Senior Civil Judge, City Civil Court at Hyderabad.

2. The contention of the petitioner is that he is the absolute owner of the property i.e., suit schedule property through notarized agreement of sale dated:1.4.2005 executed by father of respondent No.1/plaintiff by paying sale consideration of Rs.15,00,000/-. Since date of agreement of sale, he is in possession of the property. Legal heirs have no right and share over the suit schedule property. Five legal heirs of Baldev Prasad have signed and witnessed the said document except respondent No.1/plaintiff as he was not present at the time of execution. It is also contended that father of respondent No.1/plaintiff executed rental agreement dated:4.4.2005 and he paid rents to defendant Nos.2 to 6 who signed and witnessed the said document except respondent No.1/plaintiff as he was not available at the time of rental deed. The petitioner filed R.C.No.311 of 2010 against respondent No.1/plaintiff for eviction.

The further contention of the petitioner is that petitioner has interest in the suit schedule property and the respondent No.1/plaintiff is no way concerned with the suit schedule property and the said respondent No.1/plaintiff filed a false suit for partition having

knowledge about agreement of sale in favour of the petitioner by his father.

The respondent No.1/plaintiff filed Suit in O.S.No.2724 of 2010 in the month of December, 2010 as a counter case to the case which was filed by the petitioner in the month of September, 2010 vide R.C.No.311/2010 having received notice in the said R.C. In such circumstances, to avoid multiplicity of litigation, petitioner is proper and necessary party, by impleading him no prejudice would be caused to respondent No.1/plaintiff. More so, it is further contended that the defendants 1 to 5 in the written statement admitted agreement of execution of their father in the possession of the petitioner/defendant No.6.

3. Per contra, learned Counsel for the respondent No.1/plaintiff contended that earlier I.A.No.384/2011 filed for the same relief and withdrawn the same for the reasons best known to him. The present petition is only to grab the property. The respondent No.1/plaintiff is not a party to the agreement of sale and his brothers and sisters who are defendants 1 to 5 colluded with petitioner and deprived his share.

4. Now, the point that arose for determination is:

Whether the petitioner is proper and necessary party to adjudicate the issue and that the order of the Trial Court suffer from legal infirmities warranting interference of this Court?

5. In this case, notice before admission was ordered to the parties to the correct address. When the petitioner was not co-operating to dispose of the Revision Petition, it is posted under the caption of "For

Dismissal". Today, both the Counsels are present and agreed to dispose of the Civil Revision Petition.

6. Heard both the Counsels and perused the material placed on record.

7. The undisputed facts are that the respondent No.1/plaintiff filed O.S.No.2724/2010 for partition and allotment of 1/6th share of the plaintiff. It is also not in dispute that the respondent No.1 and defendants 1 to 5/respondents 2 to 6 are brothers and sisters who are children and legal heirs of late Baldev Prasad. It is also a fact that late Baldev Prasad purchased the suit schedule property bearing No.14-9-444, Chudi Bazar, Hyderabad, along with one Mr. Suresh Prasad, who is the son of his elder brother Mr. Hari Prasad.

It is also alleged in the written statement filed by defendant No.1 that late Baldev Prasad got the registered release deed, dated:7.11.2003 from Mr. Suresh Prasad, registered with Sub-Registrar, Doodbowli, Hyderabad. The said Baldev Prasad died on 8.5.2008. In the written statement filed by defendants 1 to 5 who are respondents 2 to 6 admitted that their father sold the property under notarized agreement of sale dated:1.4.2005 which was signed by respondents 2 to 6. It is also alleged in the written statement as well as in counter in IA.No.1225/2011 that since the respondent No.1/plaintiff was not present, he is not a party to the said notarized agreement of sale. Late Baldev Prasad also executed a rental deed dated:4.4.2005 for a rent of Rs.5,000/- per month and paid the rents regularly to the petitioner herein. It is further alleged that the father of the respondent No.1/plaintiff purchased the said property from Suresh Prasad S/o Hari Prasad, through registered release deed vide document No.1340 of 2003, dated:7.11.2003.

8. The Supreme Court of India in the case of C.M.V. Krishnamachari v. M.D. Dhanalakshmi Ammai and others¹ held that, it is a fit case for impleading the petitioner as a party defendant in the Suit. The applicant has a real, direct, tangible interest in the subject matter of the suit, and undoubtedly his presence is necessary to enable the Court to effectually and completely adjudicate upon the points in controversy. It is needless to observe that if there is no collusion or fraud the partition would be binding upon the third party, and his interests would therefore be bound and affected by the final decree in the partition suit. That is a suit filed for partition between members of a joint family. Petitioner therein filed an application holding the agreement to purchase a property from the defendant who had described it as self acquired property, for being impleaded as party-defendant, on the ground that the plaintiffs are claiming the said property as joint family property, that the petitioner apprehends collusion between the plaintiffs and the defendant and that he sought to be impleaded as a party to prevent any collusion and also bring to the notice of the Court his rights under the agreement of sale, so that in equity the property agreed to be sold, may, if possible, be allotted to the share of the defendant.

9. Similarly, in this case, the petitioner alleged to have purchased property under notarized agreement of sale dated: 1.4.2005 executed by late Baldev Prasad, father of the respondents herein. Since the date of purchase, it is alleged that he has been in possession and enjoyment of the same. The respondents 2 to 5 and the respondent No.1 are none other than the brothers and sisters and sons of Baldev Prasad and the respondent No.1 filed Suit for partition.

¹ AIR 1968 Mad 142

It is also a fact that the petitioner has filed R.C.No.311/2010 against respondent No.1 seeking eviction and the same is pending and subsequent to filing of that R.C., the respondent No.1 filed Suit in the month of December, 2010 vide O.S.No.2724/2010 and the allegation is that the said Suit is filed as counter blast to the case which was filed by petitioner in the month of September, 2010 vide R.C.No.311/2010. There is also a rental agreement with regard to the same property between the petitioner and father of respondent No.1. It is also an undisputed fact that the respondents 2 to 6 have signed and witnessed notarized agreement of sale dated:1.4.2005 to which admittedly, respondent No.1/plaintiff is not a party as he was absent.

10. During the course of arguments, it is also submitted that the petitioner herein filed a Suit in O.S.No.109/2013 for specific performance basing on the present affidavit / agreement of sale dated:1.4.2005 which is pending on the file of the learned II Additional Chief Judge, City Civil Court at Hyderabad and the said Suit is at the trial stage.

11. It is a well settled law that the charge under section 55 (6) (b) of the Transfer of Property Act for the pre-paid purchase-money comes into existence the moment the buyer pays part of the purchase-money towards the sale transaction, and that the same is available not only against the seller but also against the purchaser from the seller irrespective of the question whether the said purchaser had or had not notice of a charge in view of the fact that it is a statutory charge under section 55(6) (b) independent of any question of notice. From any point of view the third party will be undoubtedly entitled to a charge

for the sum of Rs.9,000 at the worst either against the property agreed to be sold or some other property.

Further, I am unable to agree with the contention of respondent No.1 that petitioner colluded with brothers and sisters of respondent No.1 who are respondents 2 to 6 because they are parties, they signed on the agreement of sale and that petitioner is also well aware of the same.

12. The present Suit arose only after the petitioner filed R.C.No.311/2010 for eviction of the respondent No.1/plaintiff. The petitioner herein also filed a Suit for specific performance in O.S.No.109/2013 and the same is pending for trial. The Trial Court, without considering all these facts, simply dismissed I.A.No.1225 of 2011 in O.S.No.2724 of 2010 on the ground that immovable property cannot be transferred under an agreement of sale and a transfer of property under unregistered agreement of sale is not valid. Since it is an error in view of the law laid down by the Supreme Court of India in the case of C.M.V. Krishnamachari v. M.D. Dhanalakshmi Ammai and others, relied upon by the petitioner. No prejudice would cause to the respondent No.1 ultimately if the Suit will be dismissed and the petitioner who is a purchaser under notarized agreement of sale dated:1.4.2005 can protect his rights and workout under equity. Accordingly, it is ordered to implead the petitioner as defendant No.6/respondent No.6 in the Suit for proper adjudication.

13. Hence, the Civil Revision Petition is allowed by ordering to implead the petitioner as defendant No.6/respondent No.6 in the Suit.

Pending Miscellaneous Petition/s, if any, shall stand closed.

JUSTICE N. BALAYOGI

Dated: 19-11-2018

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