

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.5301 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed questioning the Order dt. 04.09.2017 in I.A.No.920 of 2017 in O.S.No.78 of 2014 passed by the Additional Junior Civil Judge at Matlkajiri, Rangareddy District, dismissing the petition under Order 1 Rule 10 CPC to implead respondent No.5/Mekala Prakash as Defendant No.5.

The petitioners are the plaintiffs in the main suit filed for declaration that the registered Sale Deed bearing Document No.2978/1985 dt. 06.09.1985 executed by their father in favour of this petitioner as null and void, in operative and not binding on the plaintiffs. The suit is being contested and during cross examination of Dw.2, Defendant No.2, deposed that the original of the document sought to be cancelled is within the custody of one Mekala Prakash, who is the proposed party, and therefore, the petitioners/plaintiffs filed a Petition under Order 1 Rule 10 CPC to implead him as defendant No.5 in the main suit.

The respondents filed Counter denying the material allegations, *inter alia* contending that defendant No.2 being the owner of the property sold out the same to Mekala Prakash, the proposed party, and that he might be in possession of the said document and even if is possession of the document is with him being purchaser, he cannot be impleaded as a party to the suit filed for declaration sought by the petitioners.

The trial Court upon hearing both the counsel, dismissed the petition on various grounds.

The present Civil Revision Petition is filed on the same ground that the original document is to be produced before the Court and when the proposed party is in possession of the document allegedly on account of purchase of the property, in his absence the suit claim cannot be decided effectively and completely, requested this Court to set aside the Order passed by the trial Court.

Learned counsel for the petitioners reiterated the grounds urged in the Petition, whereas the learned counsel for the respondent supported the Order in all respects.

On considering rival contentions and perusing the material available on record, the point that arises for consideration is:

“ Whether The Proposed Party/Mekala Prakasah /Respondent No.5 herein is proper or necessary party to the suit filed for declaration to declare that the registered sale deed bearing Document No.2978/1985, dt. 06.09.1985, registered with the Sub Registrar, Vallabhanagar Taluk, Ranga Reddy District, said to have been executed by the father of the plaintiffs in favour of the defendant No.1 is null and void, inoperative and not binding on the plaintiffs?

POINT : The suit is filed for declaration and it is governed by Section 34 of Specific Relief Act and after trial, the document is to be declared as null and void, then it operates against the person, who is a party to the suit and not against 3rd party as the decree in a suit for declaration is judgment in person and not *in rem*, apart from that the petitioner being the son of the executant of the document is entitled to file a suit for cancellation under Section 31, but not under Section 34 of Specific Relief Act. If it is a suit for cancellation of the document in terms

of Sub Section 2 of Section 31 of Specific Relief Act, if the relief of cancellation is granted, a copy of the document shall be sent to the Registrar by the Court along with the Decree. Therefore, the very maintainability of the suit is doubtful, in view of the law declared by the Apex Court in ***Suhrid Singh @ Sardool Singh v. Randhir Singh and Others***¹.

The petitioners have intended to bring the person on record, who purchased the property, as proper and necessary party on the ground that he is in possession of the document having purchased the same under registered Sale deed, but that was not accepted by this Court in Civil Revision Petition No.3788 of 2016, dt.25.11.2016. Moreover, as the suit is filed for declaration, in view of Section 35 of Specific Relief Act, the Decree, if any passed is not binding on the 3rd party and apart from that the proposed party though allegedly purchased the property as per the evidence of DW.2, the petitioners being the successor of the executant cannot maintain a suit for declaration and the proposed party is neither proper or necessary party.

The word 'proper and necessary party' is not defined in the Code of Civil Procedure. In *Mumbai International Airport (P) Ltd. V Regency Convention Centre and Hotels (P) Ltd.*² the word 'proper and necessary party' defined as follows:

"A 'necessary party' is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a 'necessary party' is not impleaded, the suit itself is liable to be dismissed. A 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the Court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the Court has no jurisdiction to implead him, against the wishes of

¹ (2010) 12 SCC 12.

² 2010(7) SCC 417

the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.”

In Para No.13 of the same judgment, the Apex Court held as follows:

“ The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order I Rule 10(2) of Code of Civil Procedure ('Code' for short), which provides for impleadment of proper or necessary party”.

In view of the law declared by the Apex Court in the above judgment, the petitioner is neither proper nor necessary party to the suit filed for declaration, in the absence of proof that he purchased the property and he is in possession of the document sought to be cancelled. Therefore, the trial Court rightly concluded that the petitioners failed to establish the very basis for impleading of the proposed party and rejection of the petition by the trial Court is in accordance with law and the Order passed by the trial Court does not suffer from any illegality warranting interference of this Court by exercising power under Article 227 of the Constitution of India. Consequently, the present Petition is liable to be dismissed as it lack merit.

Accordingly, the present Civil Revision Petition is dismissed.

M. SATYANARAYANA MURTHY, J

Date: 30-10-2018
eha

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.5301 of 2017

Dt. 30-10-2018

cha

