

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.4104 OF 2015

ORDER:

This revision petition is filed under Article 227 of the Constitution of India challenging the order dated 19.06.2015 in I.A.No.3702 of 2015 in O.S.No.474 of 2010 passed by the Special Sessions Judge for SC & ST (POA) Act, 1989-cum-VII Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, dismissing the petition filed under Order 1 Rule 10 read with Section 151 C.P.C.

2. The petitioner filed petition to implead the proposed party i.e. The Manipal Housing Finance Syndicate Ltd, the 4th respondent herein as the 4th defendant in the suit. It is contended that the petitioner is absolute owner of the property purchased under registered sale deed bearing No.11309 of 1980, dated 16.12.1980 and he is working in Canara Bank and was transferred from one place to other place for every two or three years. The petitioner handed over the original sale deed of the schedule property to the elder brother, who is residing at the ancestral house and his elder brother died in the year 1993, at that time, the petitioner was working at Bangalore. The petitioner has not insisted his sister-in-law to return the original sale deed. After retirement from service voluntarily in the month of March, 2001, the petitioner enrolled as an advocate and practicing at Hyderabad. In the third week of January, 2010, the

petitioner requested his sister-in-law for return the original sale deed, but could not secure the original sale deed. Therefore, the petitioner obtained certified copy of sale deed and encumbrance certificate on 18.01.2010 and he noticed that a document was registered in favour of the 1st respondent titled as agreement of sale-cum-GPA, which was registered as document No.2150 of 2009 in the office of sub-registrar, Ranga Reddy East at Biramalguda, L.B.Nagar. The petitioner also obtained certified copy of the said agreement of sale cum-GPA, which containing photograph and finger print annexed to the document, not belonging to him. The document annexed to the agreement of sale-cum-GPA, dated 20.04.2009, vide document bearing No.2150 of 2004, clearly establish that the petitioner has not executed the said document. Based on the written statement filed by the 1st defendant, he added respondents 2 and 3 in the main suit. While the matter stood thus, on 30.01.2012 a notice was affixed on the main gate of the house under the provisions of SARFAESI Act, 2002 informing that respondents 2 and 3 failed to pay the amount mentioned in the demand notice, the 4th respondent, proposed party initiated the proceedings and taken possession under Section 13(4) of the SARFAESI Act and that the possession of the 4th respondent is illegal and hence, requested the Court below to implead the 4th respondent as the 4th defendant in the suit.

3. Notice was served on the 4th respondent, but did not appear and respondents 1 to 3 though appeared through their counsel, did not oppose the petition by filing any counter.

4. Upon hearing argument of both counsel, the Court below dismissed the petition holding that the claim is hit by Order II Rule 2 C.P.C. as the same question was agitated before the Debt Recovery Tribunal, which ended in dismissal, attained finality and the same cannot be disturbed allowing the petition under Order I Rule 10 C.P.C. before the civil Court.

5. Aggrieved by the impugned order, the present revision petition is filed mainly on the ground that the petitioner is not executant of the Agreement of sale-cum-GPA and it is fabricated document, hence, the suit itself was filed for cancellation of agreement of sale-cum-GPA and for consequential relief of injunction. But taking advantage of the alleged fabricated agreement of sale-cum-GPA, the purchasers 2 and 3 mortgaged the property, obtained loan from the 4th respondent, proposed party, committed default in payment of instalments as agreed under the loan agreement and the 4th respondent initiated proceedings under the SARFAESI Act and declared the loan account as NPA issued notice under Section 13(2) and affixed notice under Section 13(4) of SARFAESI Act to proceed further to sell the property

in the auction. At this stage, the petitioner approached the Tribunal, but the Tribunal dismissed the petition when the property was not transferred to the holder under the agreement-cum-GPA, the 4th respondent, proposed party is not entitled to bring the property to sale and dismissed the application making this petitioner remediless is illegality committed by the Courts below and prayed to set aside the impugned order allowing I.A.No.3702 of 2015.

6. The main contention of the petitioner is that he did not execute any GPA-cum-agreement of sale in favour of any one including borrower, but allegedly created a mortgage in favour of the 4th respondent by deposit of title deeds and when the agreement of sale-cum-GPA itself is illegal, the 4th respondent proposed party is not entitled to proceed against the property to recover loan amount due and when the suit is pending for cancellation of agreement of sale-cum-GPA. If the property was sold in an auction, it would lead to multiplicity of litigation. The petitioner filed petition under Order I Rule 10 C.P.C. to implead the 4th respondent as the 4th defendant in the main suit to put an end to the unnecessary future litigation. But the Court did not accept the contention on the sole ground that the claim is hit by Order II Rule 2 C.P.C.

7. Learned counsel for the petitioner to substantiate his contention, placed reliance on judgments of this Court in

Nidumukkala Sriramamurty v Patchipulusu

Venkatasubbarao and others¹, Vodde Narayana Reddy v Mandal Revenue Officer, Narpala Anantapur District and others², and Varanasi Madhava Rao v Narayansetti Govind Rajulu and others³ and the judgment of the apex Court in **M.V.Ravindranath and others v Union of India and others⁴** and requested this Court to allow the revision petition setting aside the impugned order.

8. The petitioner is the plaintiff in the suit filed for cancellation of agreement of sale-cum-GPA on the ground that it is a fabricated or forged document. Initially the suit was filed against the 1st respondent, later on filing the written statement by the 1st defendant, impleaded respondents 2 and 3 and when notice under Section 13(4) of SARFAESI Act was affixed to the premises, which belongs to the petitioner, he came to know about the proceedings under SARFAESI Act. If for any reason, the relief in the main suit is granted, it will have its own impact on the competency of respondents to create mortgage over the property belonging to the petitioner and mortgage itself become invalid. Therefore, the rights of the proposed party, the 4th respondent will be defeated. In such a case, if the suit is decided in his absence, he cannot recover the amount due, by proceeding against the property mortgaged i.e. suit schedule property. Therefore, the 4th respondent is also having direct interest in the property and

¹ 1956 ALT 917

² 1995(2) ALD 25

³ 1999(6) ALD 194

⁴ (2000)10 SCC 474

in view of judgment of the Apex Court in ***Pankajbhai Rameshbhai Zalavadia v Jethabhai Kalabhai Zalavadiya (deceased) through L.Rs and others***⁵ to implead a party, he must have direct interest in the subject matter of the litigation. When the implead party has got direct interest in the property i.e. mortgage creating charge over the property then the 4th respondent is deemed to be a person having direct interest in the property for realization of the debt due by respondents 2 and 3. When proposed party has got direct interest, he is bound to be impleaded. If for any reason, the suit is decided in his absence, no effective or complete decree can be passed and it would lead to multiplication of proceedings. Identical question came up before this Court in **Nidumukala Sriramamurthy's** case referred supra, where the Court held that the expression questions, involved in the suit in Order I Rule 10(2) does not mean merely the questions which are involved in the suit as between the parties originally impleaded. The object of the provision is that the real dispute raised in the suit should be decided in the presence of all the parties interested in the dispute and for that purpose they should be brought before the Court. Order I Rule 10(2) was framed in order to ensure that the dispute might be finally determined at the same time in the presence of all the parties interested without the delay and expense of several actions and trials and inconclusive adjudications.

⁵ JT 2017(9) SC 429

The Court can implead a new party as a defendant, in a fit and proper case, even against the plaintiff's desire.

9. The facts of the above judgments are that the proposed party was mortgagee of the property and thereby Court concluded that he is the person interested in the litigation. In the other two judgments, the single Judge of this Court held that no fetter can be placed on the jurisdiction of Court to implead a party and ultimately, it is the Court to consider who is necessary and proper party, so that factual adjudication is made so as to bind the parties even if an application is made to implead persons or officers as party, the Court is not precluded from exercising power by applying its mind and find out as to whether such persons are necessary or proper party and if not whether any person or officer could be as party. The similar principle is reiterated in the latter judgment in **Vadde Narayana Reddy's** case referred supra and the later judgment of the Apex Court in **M.V.Ravindranath and others's** case referred supra the Court held that a person, who is effected by any order is to be impleaded.

10. In the present case, the question of application of doctrine of *dominus litis* would not arise. The Apex Court in **Mumbai International Airport (P) Ltd. V Regency**

Convention Centre and Hotels (P) Ltd.⁶ 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 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.”

11. 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”.

12. A person having direct interest in the property, which is subject matter of the suit can be impleaded to avoid unnecessary multiplicity of proceedings. The proposed party being a mortgagee of the subject matter of the suit schedule property evinced interest in the dispute for the reason that in case any decree is passed, in the absence of the 4th respondent, it would seriously effect its rights and he will be deprived of right to recover of debt due. Hence, I find that the

⁶ 2010(7) SCC 417

4th respondent is proper and necessary party to the suit in whose absence, the suit claim cannot be decided effectively and completely.

13. The Court below dismissed the petition on the ground that the claim is hit by Order II Rule 2 C.P.C. and the finding recorded by the Court below is perverse for the reason that according to Order II Rule 2 C.P.C. every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action, but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court. Sub-rule 2 says where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion, so omitted or relinquished.

14. But here, the petitioner filed petition before the Debt Recovery Tribunal to implead him as party to the proceedings, but did not relinquish or abandoned any claim, which he is entitled to claim. Hence, the finding recorded by the Court below that the claim of the petitioner is hit by Order II Rule 2 C.P.C. is perverse and consequently, the impugned order passed by the Court below is liable to be set aside.

15. As discussed above, the order passed by the Court below is illegal and perverse and such order is liable to be set aside exercising power under Article 227 of the Constitution of India since such supervisory power is conferred on the

High Court to keep the Courts within its jurisdictional limits in view of the judgment in **State (N.C.T. Of Delhi) v. Navjot Sandhu@ Afsan Guru**⁷ that under Article 227 of Constitution of India the High Court can interfere with the order of the Subordinate Courts.

16. In the result, the order dated 19.06.2015 in I.A.No.3702 of 2015 in O.S.No.474 of 2010 passed by the Special Sessions Judge for SC & ST (POA) Act, 1989-cum-VII Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar is hereby set aside holding that the 4th respondent is proper and necessary party to the suit and accordingly, I.A.No.3702 of 2015 in O.S.No.474 of 2010 is allowed permitting the petitioner to implead the 4th respondent as the 4th defendant in the suit. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

M. SATYANARAYANA MURTHY,J

16.02.2018
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⁷ AIR 2005 SC 3820