

**THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY**

**C.R.P.No.4666 of 2016**

**ORDER:**

This revision petition is filed under Article 227 of the Constitution of India assailing the order dated 08.06.2016 passed in I.A.No.1325 of 2014 in O.S.No.125 of 2013 on the file of the Court of II Additional District Judge, Guntur.

2. Heard Sri V.Ravinder Rao, learned senior counsel representing Sri N.A.Ramachandra Murthy, learned counsel for the petitioner and Sri M.R.K.Chakravarthy, learned counsel for the respondent.

3. A perusal of the record reveals that the petitioner herein filed O.S.No.125 of 2013 against the first respondent for specific performance of agreement of sale dated 19.08.2011. On 20.04.2013, the petitioner gave a paper publication informing the general public not to purchase the suit schedule property from the first respondent. On 22.04.2013, the petitioner presented the suit. Along with the suit, the petitioner filed interlocutory application seeking direction to the first respondent not to alienate the suit schedule property. On 23.04.2013, the first respondent appeared before the trial Court and requested time to file counter in the interlocutory application. The first respondent and his family members executed a partition deed on 24.04.2013. On coming to know about the same, the petitioner filed the

present I.A. to implead the second respondent as defendant No.2 in the suit. The second respondent filed counter alleging that the suit schedule property is the ancestral property of the family, therefore, she has a right in the said property. In the counter, the second respondent stated that she has no objection to come on record. The trial Court dismissed the petition on the ground that if the proposed party is added, the nature of the suit would be changed. Hence, the revision.

4. The learned counsel for the petitioner has drawn the attention of this Court to the decision reported in ***THOMSON PRESS (INDIA) LIMITED v. NANAK BUILDERS AND INVESTORS PRIVATE LIMITED AND OTHERS***<sup>1</sup>, wherein it was held at paras 16 and 57 as follows:

“Para No.16: The question, therefore, that falls for consideration is as to whether if the appellant who is the transferee pendent elite having notice and knowledge about the pendency of the suit for specific performance and order of injunction can be impleaded as party under Order 1 Rule 10 on the basis of sale deeds executed in their favour by the defendant Sawhneys.”

“Para 57. To sum up:

57.1. The appellant is not a bona fide purchaser and is, therefore, not protected against specific performance of the contract between the plaintiffs and the defendant owners in the suit.

57.2. The transfer in favour of the appellant pendent elite is effective in transferring title to the appellant but such title shall remain subservient to the rights of the plaintiff in the suit and subject to any direction which the Court may eventually pass therein.

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<sup>1</sup> (2013) 5 Supreme Court Cases 397

57.3. Since the appellant has purchased the entire estate that forms the subject-matter of the suit, the appellant is entitled to be added as a party-defendant to the suit.

57.4. The appellant shall as a result of his addition raise and pursue only such defences as were available and taken by the original defendants and none other.”

5. Let me consider the facts of the case on hand in the light of the above legal principle.

6. It is a settled principle of law that a person, who is having interest or semblance of interest in the subject matter of the suit is entitled to come on record taking aid of Order I Rule 10 CPC. In a suit for specific performance, the Court has to take into consideration the subsequent events while deciding the petitions filed under Order I Rule 10 CPC. Admittedly, the partition deed was registered on 24.04.2013. The proposed party is claiming right in the suit schedule property in pursuance of the partition deed. Whether the suit schedule property is the ancestral property or self-acquired property of the first respondent has to be decided at the time of full fledged trial only. If this Court expresses any opinion touching the nature of the property and validity or otherwise of the partition deed, the same would cause prejudice to one of the parties to the proceedings. Hence, this Court is not inclined to express any opinion on the rival contentions submitted by both parties. It is needless to say, in certain circumstances in a suit for partition, the Court may direct not only the executant but also the other parties to join in

execution of sale deed. If the petition is dismissed, it may cause hardship to the petitioner and also to the second respondent. The very object of Order I Rule 10 CPC is to avoid multiplicity of litigation. To put an end to the litigation once for all, the Court may not be in a position to adjudicate the matter effectively in the absence of the second respondent. Viewed from this angle also, the second respondent is a necessary and proper party. The trial Court has not considered the scope of Order I Rule 10 CPC in right perspective and dismissed the petition on assumptions and presumptions. In a suit for specific performance, the plaintiff has to establish the execution of agreement of sale. Then only, the onus of proof shifts on the defendant. The trial Court misconstrued the scope of Order I Rule 10 CPC and dismissed the petition. The findings recorded by the trial Court are not sustainable either on facts or in law.

7. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, this Court is of the considered view that the second respondent is a necessary and property party to the suit.

8. In the result, the civil revision petition is allowed setting aside the order dated 08.06.2016 in I.A.No.1325 of 2014 in O.S.No.125 of 2013. Consequently, I.A.No.1325 of 2014 is allowed impleading the second respondent as defendant No.2 in O.S.No.125 of 2013. No order as to costs. Any

observations made by this Court are only confined to this revision petition.

9. Miscellaneous petitions pending, if any, shall stand closed.

**T.SUNIL CHOWDARY, J**

**6<sup>th</sup> July 2018**

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