

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.6409 of 2018

ORDER :

Heard the counsel for petitioner. None appears for respondents.

2. This Civil Revision Petition is filed challenging the order dt.11.09.2018 passed in I.A.No.40 of 2017 in O.S.No.130 of 2013 on the file of I Additional District Judge, East Godavari, at Rajamahendravaram.

3. The petitioner herein is a third-party to the said suit.

4. The said suit was filed by 1st respondent against respondent nos.2 and 3 for specific performance of an agreement of sale dt.18.11.2011, allegedly executed by 2nd respondent in favour of 1st respondent.

5. The petitioner herein had filed O.S.No.870 of 2012 against the 2nd respondent for recovery of money against the 2nd respondent on the basis of a promissory note and obtained a decree on 23.07.2013 therein. He had also obtained an order of attachment before judgment in I.A.No.1840 of 2012 as against the plaint schedule property on 21.12.2012, which was subsequently made absolute.

6. The 1st respondent, who is the plaintiff in O.S.No.130 of 2013, filed E.A.no.375 of 2016 under Order XXI Rule 58 to raise the attachment. But the said claim petition was disposed of continuing the attachment over the schedule property subject to the result in

O.S.No.130 of 2013 on the file of I Additional District Judge, Rajamahendravaram.

7. The petitioner contended that the agreement of sale dt.18.11.2011, allegedly executed by 2nd respondent in favour of 1st respondent, is a fabricated one; and his rights would be affected if there is collusion between respondent nos.1 and 2; and so, he should be brought on record in O.S.No.130 of 2013.

8. Counter-affidavit was filed by 1st respondent stating that 1st respondent had filed an appeal A.S.No.181 of 2017 before the I Additional District Judge, Rajamahendravaram and so the order in the suit O.S.No.870 of 2012 had not yet become final between the parties. He also contended that the suit O.S.No.130 of 2013, being one for specific performance of Agreement of Sale, the petitioner, who is not a party to the Agreement of Sale dt.18.11.2011, would not be a necessary party.

9. Accepting the contention of 1st respondent, the Court below dismissed I.A.No.40 of 2017 in O.S.No.130 of 2013 on 11.09.2018.

10. Assailing the same, the present Civil Revision Petition is filed.

11. The counsel for petitioner reiterated the contentions raised in the Court below and contended that the Court below ought to have impleaded him as a party-defendant in the suit since according to petitioner, the Agreement of Sale dt.18.11.2011 on the basis of which

O.S.No.130 of 2013 was filed was a fabricated agreement and there is a possibility of collusion between respondent nos.1 and 2.

12. The question before the Court in a suit for specific performance is whether the vendor had executed the document and whether the conditions prescribed in the provisions of the Specific Relief Act, 1963 were complied with for granting the relief of specific performance.

13. This aspect has nothing to do with the petitioner since he is not a party to the Agreement of Sale and it cannot be said that without his presence the dispute as to specific performance cannot be determined.

14. This view has been taken in **Anil Kumar Singh v. Shivnath Mishra and Gadasa Guru¹** and **Thomson Press (India) Limited v. Nanak Builders and Investors Private Limited and others²**, which was followed by the Court below.

15. Admittedly, the Claim Petition E.A.No.375 of 2016, filed by the 1st respondent in O.S.No.870 of 2012, is still subject matter of an Appeal A.S.no.181 of 2017 and has not yet attained finality. Irrespective of what happens in O.S.No.130 of 2013, the petitioner can still pursue his legal remedies before the I Additional Senior Civil Judge, Rajamahendravaram.

16. There is also no material placed by the petitioner before this Court to show that there is collusion between respondent nos.1 and 2,

¹ 1995 S.C.C. (3) 147

² (2013) 5 S.C.C. 397

and in fact, the Written Statement and the statement in OS.No.130 of 2013 admittedly shows that the 2nd respondent had denied the Agreement of Sale dt.18.11.2011 pleaded by the 1st respondent therein.

17. By impleading petitioner against the will of 1st respondent it would change the character of the suit O.S.No.130 of 2013, for specific performance of Agreement of Sale to something else, which cannot be permitted.

18. I therefore do not see any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

19. Accordingly, the Civil Revision Petition fails and it is accordingly dismissed at the stage of admission. No order as to costs.

20. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 16.11.2018

Ndr/*