

*** HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY**

+ CIVIL REVISION PETITION No.6103 of 2017

% 21-02-2018

Manepalli Mohan Rao S/o.Krishna Rao, aged
40 years, Business, Cultivation, resident of
Door No.10-3-22, West Maredpally, Secunderabad.

..PETITIONER

VS.

\$ Jakkam Sunitha and others.

..RESPONDENTS.

! Counsel For The Petitioner: D.V.Reddy

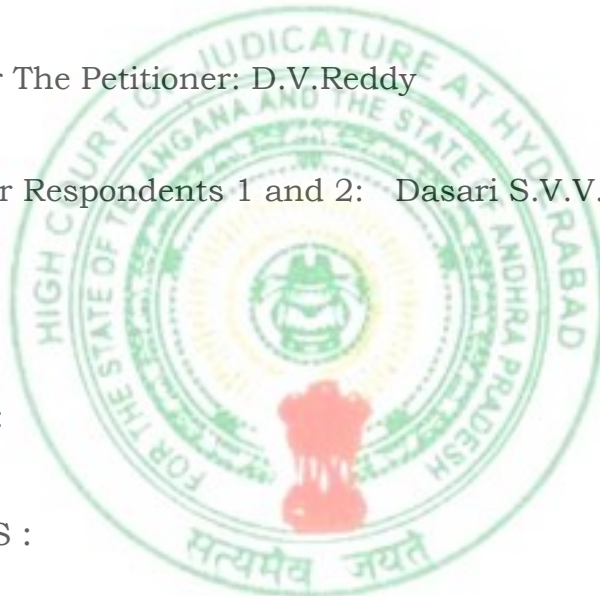
^ Counsel For Respondents 1 and 2: Dasari S.V.V.S.V.Prasad

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> Head Note :

? CITATIONS :

1. AIR 1994 Andhra Pradesh 50
2. 1999(1) ALT 152
3. 2001(2) ALT 477



HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY**CIVIL REVISION PETITION No.6103 of 2017****O R D E R :**

This revision is filed against the order dated 22-09-2017 in I.A.No.388 of 2015 in O.S.No.13 of 201, wherein and whereby the application filed by the petitioner/plaintiff for impleading the proposed respondent as defendant No.3 in O.S.No.13 of 2014 is dismissed.

The brief facts which are necessary for disposal of revision are as under:

The petitioner filed O.S.No.13 of 2014 for specific performance of agreement of sale dated 09-01-2012 against respondents 1 and 2 in respect of suit schedule properties. The respondents 1 and 2 entered into agreement of sale on 09-01-2012 to sell the suit schedule land with the petitioner. After execution of agreement of sale, respondents 1 and 2 created equitable mortgage in favour of respondent No.3 on 28-05-2013 to defeat the right and interest of the petitioner in the suit schedule property, but the same is not valid and binding on the petitioner. The respondents attempted to bring the suit schedule land for sale under the guise of equitable mortgage by initiating proceedings at Hyderabad. As such, respondent No.3 is necessary party for adjudication of *lis* in the suit.

Though notice was served in the trial Court, respondent No.3 has not contested the present application.

It is only respondents 1 and 2 herein contested the revision by filing counter affidavit stating that the suit agreement is a forged and fabricated document by the petitioner. These

respondents denied the execution of agreement of sale in favour of proposed defendant.

Learned counsel for the petitioner submits that respondents 1 and 2 executed equitable mortgage on 28-05-2013 in favour of respondent No.3 and respondent No.3 would be claiming rights in under the said mortgage. He also submits that the plaintiff filed criminal case against respondents 1 and 2 only on the said aspect and the same is registered, as such the proposed defendant is a necessary party. In support of his contention, he relied on the judgments of **Adapa Venkateswara Rao v. Mohammad Suleman**¹, **G.Padmavati v. G.Balraj**² and **Akula Seshamma v. P.Eswaraiah**³.

Though notice is served on respondent No.3/proposed defendant No.3, there is no appearance for him in this revision.

Learned counsel appearing for respondents 1 and 2 submits that in a suit for specific performance, a third party to an agreement cannot be impleaded, as such without the presence of proposed defendant No.3 also the suit can effectively be adjudicated.

It is to be seen that in this case, admittedly the proposed defendant No.3 is a third party to the agreement of sale said to have been executed by respondents 1 and 2 on 09-01-2012 in favour of petitioner. In the judgment of **Adapa Venkateswara Rao v.Mohammad Suleman** cited (1 supra) this Court held as under:

4. In a later decision reported in *Ramesh Chandra Sarada v. Phoolchand Soni*, 1981 (1) An WR 427, Justice Punnayya, had

¹ AIR 1994 Andhra Pradesh 50

² 1999(1) ALT 152

³ 2001(2) ALT 477

occasion to consider whether the provisions of Order 1, Rule 10(2) C.P.C. are applicable to a suit for specific performance of an agreement of sale. The learned Judge considered a catena of case law and held as follows:

"It is, therefore, clear that all the parties who have direct interest in the property in respect of which specific performance is sought for should be impleaded for the effective and complete adjudication of all the questions involved in the suit to avoid multiplicity of suits or proceedings".

5. In a subsequent decision reported in [Gyaneshwar Rao v. Mahmood Shareef](#), , [Justice Seetharam Reddy](#), 1982 (1) An LT 195: (AIR 1982 AP 155), had also occasion to consider the application of the provisions of order I, Rule 10 C.P.C. to a suit for specific performance of an agreement of sale. The learned Judge on an elaborate consideration of several decisions cited at the bar, including the decision reported in [Razi Begum v. Anwar Begum](#), AIR 1958 SC 886 deducing the following principles, held thus at Page 162 (of AIR 1982):

"On a conspectus of the above case-law, the principles that could be said to emerge in regard to application of the provisions enacted in sub-rule (2) of Rule 10 of Order 1, Civil Procedure Code, and in particular the expressions "whose presence before the Court may be necessary" and "in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit" are:

(1) "Settle all the questions involved in the suit" should be construed to mean, not restricting the scope between the parties to the suit, but to a wider area concerning the subject-matter of the suit involving even the third parties' claim and interest.

(2) The question of addition of parties under Rule 10(2) of Order 1 is generally not one of initial jurisdiction but of a judicial discretion which has to be exercised in view of the facts and circumstances of each case. The jurisdictional aspect is in the limited sense contemplated under Section 115 of the Code of Civil Procedure.

(3) For effectual and complete adjudication of the questions involved in the suit, the presence of a third-party, even if it is not necessary, but if proper, should be allowed to be added as a party if applied for.

(4) In a suit relating to property, the person to be added as a party should have a direct interest as distinct from a commercial interest in the subject-matter of the litigation.

(5) Where the subject-matter of litigation is a declaration as regards status or a legal character, the rule of presence or direct interest may be relaxed in a suitable case where the Court is of the opinion that by adding that party, it would be in a better position effectually and completely to adjudicate upon the controversy.

(6) The rule laid down in [Section 43](#) of the Specific Relief Act is not exactly a rule of res judicata. It is narrow in one sense and wider in another".

Therefore, there is no doubt that the provisions of Order 1, Rule 10 C.P.C. are application to suits for specific performance of contract of sale.

6. The only question that remains for consideration is, whether the petitioners are proper and necessary parties to this suit ?

7. The petitioners are claiming to have purchased the plaint schedule property from the defendant Nos. 4 & 5 who are the owners under two separate sale deeds dated 12-11-1988 and 2-2-1989 which are duly registered as Document Nos. 5468 and 1244/89 in the Office of the Sub-Registrar, Vijayawada. Since, they have purchased the property, pending the suit, defendant Nos. 4 & 5 can only transfer the right and interest they have, in the schedule property, subject to the result of the suit. It is also alleged in the petition filed by the petitioners that as the defendant Nos. 4 & 5 have sold away the property, they are not evincing interest in the suit and as such, they may be impleaded as defendant Nos. 6 & 7 in the suit. It cannot therefore, be said that they have no interest in the schedule property. As they are claiming through defendant Nos. 4 & 5, they cannot get better rights than

defendant Nos. 4 & 5, but at the same time, they are entitled to safeguard their rights in case defendant Nos. 4 & 5 do not show any interest. In the light of the decisions cited above, the petitioners have to be impleaded as defendant Nos. 6 & 7 in order to finally adjudicate the real dispute between the parties and also to shorten the litigation and to avoid multiplicity of proceedings.

In the judgment of **G.Padmavati v. G.Balraj** cited (2 supra), this Court held as under:

4. As a subsequent purchaser of the property the second respondent is certainly a necessary and proper party to the suit. In her absence no effective decree can be passed. It, however, appears from the record that even prior to the filing of the suit the petitioner was informed by the respondents about the sale of the property to the 2nd respondent and yet the petitioner failed to implead the second respondent in the suit initially. Considering this fact, I feel it is a fit case where the petitioner should be subjected to terms as a condition for impleading the second respondent as a party to the suit.”

In the judgment of **Akula Seshamma v. P.Eswaraiah** cited (3 supra), this Court held as under:

“The Supreme Court also rules that in a suit for specific performance the question is whether the vendor had executed the document and whether conditions prescribed in the provisions of [Specific Relief Act](#), 1963 have been complied with for granting the relief of specific performance. Though Sri M.P. Chandramouli submits that this judgment is an authority for the proposition that in a suit for specific performance of agreement of sale a third party is not a necessary party, the submission cannot be accepted, for, the Supreme Court did not lay down any such rule. In fact, referring to the earlier judgments in [Razia Begum v. Sahebzadi Anwar Begum](#)(AIR 1958 SC 886), and [Lala Durga Prasad v. Leila Deep Chand](#) (AIR 1954 SC 75), as well as [Sections 15 and 16](#) of Specific Relief Act, the Supreme Court categorically observed that based on the fact situation the relief has to be moulded by the

Court. The Supreme Court also noticed that in a suit for specific performance, the subsequent purchaser is a necessary party. Therefore, it can be concluded that though a third party who is not at all concerned with the property in question cannot be claimed to be added as a plaintiff or defendant under Order 1, Rule 10(2) CPC. A person having interest in the suit schedule property is a proper and necessary party for effective and complete adjudication of all issues in a suit for specific performance of agreement of sale.”

Even in the judgment of **Kasturi v. Iyyamperumal** (4 supra) relied on by learned counsel for the respondents, the Supreme Court held as under:

“ We may look to this problem from another angle. Section 19 of the Specific Relief Act provides relief against parties and persons claiming under them by subsequent title. Except as otherwise provided by Chapter II, Specific Performance of a Contract may be enforced against:

- “19 (a) either party thereto;
- b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;
- c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;
- d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;
- e) when a promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company:

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.”

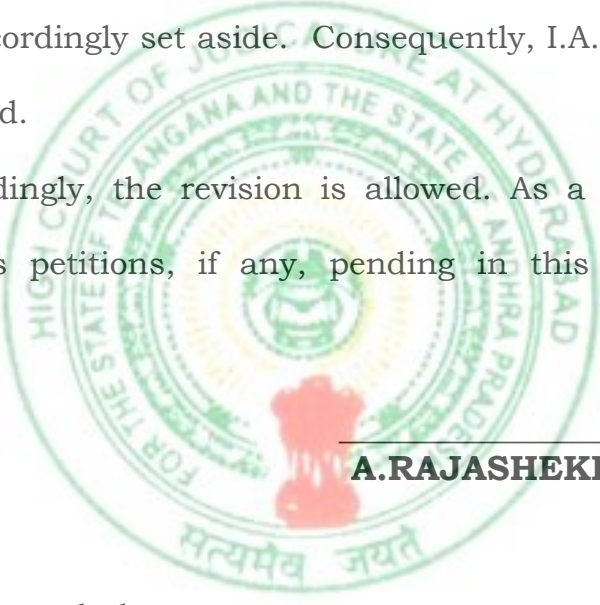
9. We have carefully considered sub-sections (a) to (e) of Section 19 of the Act. From a careful examination of the aforesaid provisions of clauses (a) to (e) of the Specific Relief Act we are of the view that the persons seeking addition in the suit for specific performance of the contract for sale who were not claiming under the vendor but they were claiming adverse to the title of the vendor do not fall in any of the categories enumerated in sub-sections (a) to (e) of Section 19 of the Specific Relief Act. ”

In this case, it is to be seen that the factum of execution of mortgage deed in favour of the respondent No.3/proposed defendant No.3 is not disputed by respondents 1 and 2 and also by proposed defendant No.3 by opposing its impleadment in the suit. Respondent No.3 will be claiming rights through respondents 1 and 2 only on the basis of alleged mortgage deed executed by them and he will not be claiming any independent right in the schedule property. This Court is also of the opinion that the presence of respondent No.3 /proposed defendant No.3 before the Court will be necessary in order to enable the Court to effectively and completely adjudicate upon and settle all questions involved in the suit. The Apex Court clearly held that the persons, who are claiming independent rights do not fall in any of the categories enumerated in sub-sections (a) to (e) of Section 19 of the Specific Relief Act. But in this case, having regard to the circumstances it can be said that respondent No.3 is not claiming any independent rights and as such, respondent No.3 can be impleaded for proper and effective adjudication of the suit. In view of the same, the judgment cited by learned counsel for respondents 1 and 2 also supports the case of the petitioner/plaintiff. It is also not known why respondents 1

and 2 are opposing the impleadment of proposed defendant No.3, when respondent No.3 is not opposing. This fact also has to be taken into account by the trial Court while disposing the suit. All these aspects were not properly considered by the trial Court. In view of the law laid down in the decisions cited supra, the contention of respondents 1 and 2 that respondent No.3 who is not a party to the suit agreement cannot be impleaded, has no legs to stand.

In view of the facts and circumstances and law laid down in the judgments cited supra, the impugned order is liable to be set aside and accordingly set aside. Consequently, I.A.No.388 of 2015 stands allowed.

Accordingly, the revision is allowed. As a sequel thereto, miscellaneous petitions, if any, pending in this revision, shall stand closed.



A.RAJASHEKER REDDY, J

21-02-2018

Note:

LR copy is to be marked.

B/o.

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