

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.1928 of 2013

O R D E R:

Heard counsel for petitioner and Sri A.P.Suresh, Counsel appearing for respondents 2 & 3.

2. Though the 1st respondent has engaged a counsel, he is absent.

3. This Revision is filed under Article 227 of the Constitution of India challenging the order dt.08.02.2013 in I.A.No.1713 of 2012 in O.S.No.146 of 2006 of the VIII Additional Senior Civil Judge, R.R. District at L.B.Nagar.

4. Petitioner is a third party to the above suit. The said suit had been filed by 1st respondent against respondents 2 & 3 for permanent injunction.

5. The suit was initially decreed on 21.12.2009.

6. Thereafter, a Gift Settlement Deed was executed by the 1st respondent in favour of the petitioner herein in July, 2010.

7. However, the decree in the suit was set aside on 06.11.2010 and the suit was restored to the file of the Court below.

8. Thereafter, petitioner filed I.A.No.1713 of 2012 under Order I Rule 10 CPC to permit him to contest the suit on the basis of the Gift Settlement Deed executed in his favour by the 1st respondent.

9. The respondents 2 and 3, who are defendants in the suit, opposed the said application denying knowledge of the said Gift Deed. It is also contended that the petitioner is not a necessary party to the suit.

10. By order dt.08.02.2013 the Court below rejected the said I.A., holding that the execution of the Gift Deed in petitioner's favour is pending trial of the suit and is hit by Section 52 of Transfer of Property Act, 1882 and he also observed that since alienation took place pending disposal of the suit, petitioner is bound by the final judgment in the suit but he is not a necessary party.

11. Assailing the same, this Revision is filed.

12. Counsel for petitioner contends that the reasoning of the Court below is unsustainable since a *lis-pendens* transfer is not void and the petitioner, having obtained the property under Gift Settlement Deed, would have to properly contest the suit, since even according to the Court below he is bound by the final judgment in the suit. He further contends that the reasoning of the Court below that petitioner would not be a necessary party, even though the final judgment in the suit binds him, is perverse.

13. Counsel for respondents 2 and 3 supported the order passed by the Court below.

14. No doubt, the Gift Deed in favour of the petitioner is hit by Doctrine of *lis pendens*, but the transfer is not void. It only makes the transfer of property to the petitioner subject to the result of the suit. Thus, the judgment in the suit would bind the petitioner. Therefore, he would be a necessary party to the suit and is entitled to contest the suit by leading evidence because his donor might not evince any interest, after execution of the Gift Deed, to contest the suit.

15. Therefore, I am of the opinion that the reasoning of the Court below is perverse and unsustainable and if the petitioner is impleaded as a party to the suit, it would also avoid multiplicity of litigation.

16. So, this Civil Revision Petition is allowed; the order dt.08.02.2013 in I.A.No.1713 of 2012 in O.S.No.146 of 2006 of the VIII Additional Senior Civil Judge, R.R. District at L.B.Nagar is set aside; and I.A.No.1713 of 2012 is allowed. No order as to costs.

17. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

03rd January, 2019.

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