

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.322 of 2019

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.25.11.2018 passed in I.A.No.75 of 2016 in O.S.No.16 of 2010 on the file of the Senior Civil Judge, Jangaon.

2. The petitioner herein is third-party to the suit.
3. The 1st respondent herein filed a suit against the 2nd respondent for declaration of his title to the plaint 'A' and 'B' Schedule properties, and for permanent injunction.
4. According to 1st respondent, he purchased the 'A' Schedule property from one P. Keerti, daughter of one P. Apparao, under a Document No.43/2010; and he acquired 'B' Schedule property under a registered Agreement of Sale-cum-General Power of Attorney executed by the same vendor bearing Document No.4/2012. He alleged that his vendor was gifted the 'A' and 'B' schedule properties by her mother Smt. P. Aruna under a registered Gift Settlement Deed being Document No.272/2008, dt.13.02.2008, and she had accepted the said gift and was put in actual possession of the property. He stated that the mother of his vendor P. Aruna purchased Ac.0.20 guntas of land in Survey No.537/B from P. Satyanarana under a registered sale deed dt.10.04.1987; that the 2nd respondent is the

second daughter of the said Satyanaranaya; and she claimed to have obtained the plaint schedule properties from her father.

5. It is the contention of 1st respondent that the said Satyanarayana having sold land covered by 'A' and 'B' Schedule properties to Smt. P. Aruna on 10.04.1987, could not have conveyed the same to the 2nd respondent and the Revenue Authorities could not have issued pattadar pass books in favour of Satyanarayana.

6. He alleged that his vendor Smt. P. Keerti filed O.S.No.168 of 2009 before the Principal Junior Civil Judge, Janagaon and obtained temporary injunction on 28.08.2009 in I.A.No.237 of 2009; that the said order was still subsisting on 16.10.2010 when the suit schedule property was sold in favour of 1st respondent. He alleged that he is in possession of the same. He further alleged that the 2nd respondent and her father Satyanarayana colluded with his vendor P. Keerti and filed a Memo not pressing O.S.No.168 of 2009 without the knowledge of the 1st respondent.

7. Written Statement was filed by 2nd respondent opposing the suit claim. The allegations of 1st respondent in the plaint were denied and it is contended that Smt. P. Keerti, the vendor of 1st respondent, was not the owner of plaint 'A' and 'B' Schedule properties even though Gift Settlement Deed dt.13.02.2008 was executed; and there was no document to show that she had any constructive possession and

enjoyment of the same on the date of prior to transfer of 'A' and 'B' Schedule properties by her to 1st respondent.

8. It was denied that the vendor of 1st respondent colluded with 2nd respondent's father and not pressed O.S.No.168 of 2009. She contended that she is the owner and possessor of the plaint schedule property and she had constructed a building therein as per permission accorded by the Gram Panchayat, Palakurthi. She alleged that the structures erected by her were dismantled by the 1st respondent and others on 02.02.2010, and she had lodged a police complaint.

9. In the suit, I.A.No.75 of 2016 was filed by Sri P. Satyanarayana, seeking to implead himself as 2nd defendant stating that if he is impleaded, it would lead to effectual adjudication of all the questions involved in the suit. He stated that he is the holder of Agreement of Sale from Smt. P. Aruna under a sale agreement dt.19.12.2010 in respect of the suit land; and he filed O.S.No.166 of 2012 before the V Additional District Judge, Janagaon for specific performance of the sale agreement against the said Smt.P. Aruna and the 1st respondent, and it is pending; that the 1st respondent and Smt. P. Aruna along with her husband and daughter colluded and brought into existence the sale deed dt.16.01.2010 and another sale agreement of sale-cum-G.P.A. dt.16.01.2010 in favour of 1st respondent to cause loss to petitioner and his daughter, the 2nd respondent. He alleged that the 1st respondent, after execution of the sale deed and agreement of sale-cum-G.P.A., dt.16.01.2010, started interfering with the possession and

enjoyment of the 2nd respondent. He contended that he is the absolute owner and possessor of the plaint schedule property through his daughter, the 2nd respondent, in view of sale agreement dt.19.12.2000 executed by Smt. P. Aruna, though the said 2nd respondent is the *de facto* owner in possession and enjoyment of the suit schedule property on the date of the suit.

10. By order dt.25.11.2018, the Court below dismissed the said application.

11. After referring to the contentions of parties, the Court below observed that O.S.No.166 of 2012 was filed only for a declaration to declare that the 1st respondent is the owner and possessor of plaint 'A' and 'B' schedule properties; that no relief was sought against the petitioner; and petitioner had also filed O.S.No.166 of 2012 for specific performance of contract which is already subsisting among the parties, and no prejudice would be caused to the petitioner in the present suit if he is not impleaded.

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

13. Though the counsel for petitioner sought to contend that grave prejudice would be caused to petitioner if the petitioner is not impleaded, I am of the opinion that O.S.No.16 of 2010 is filed by the 1st respondent for declaration of his ownership of 'A' and 'B' Schedule properties and for permanent injunction against the daughter of petitioner, i.e., 2nd respondent; and if the evidence adduced by the

1st respondent establishes the title of 1st respondent and his possession, he would not be entitled to the said relief.

14. But the petitioner's suit O.S.No.166 of 2012 is against Smt. P. Aruna, the mother of the vendor of the 1st respondent is only for specific performance of the sale agreement dt.19.12.2000 executed in his favour allegedly by the said Smt. P. Aruna. Such an agreement of sale will not confer any right in the property in favour of petitioner unless the suit O.S.No.166 of 2012 is decided and a decree is obtained by petitioner. So he would not be entitled to have his title adjudicated to the property which is subject matter of O.S.No.16 of 2010. Moreover, the 1st respondent is the *dominus litis* and he is not seeking any relief against the petitioner and he cannot be compelled to litigate against the petitioner.

15. I therefore do not find any error of jurisdiction in the order passed by the Court below refusing to implead the petitioner as 2nd defendant in the suit.

16. Accordingly, the Civil Revision Petition fails and it is dismissed. No order as to costs.

17. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 29.03.2019

Ndr/*