

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P. No.458 OF 2019

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.10.07.2018 in I.A.No.1217 of 2016 in O.S.No.485 of 2006 of the VII Additional Senior Civil Judge at L.B.Nagar, Ranga Reddy.

2. Petitioner is a third party to the above suit.
3. The said suit was filed by the 1st respondent on 14.03.2006 against respondents 2 and 3 for declaration of title of the 1st respondent in respect of an extent of Acs.4.37 gts., in Survey No.93 of Kismathpura village, Rajendranagar Mandal, Ranga Reddy District and for an injunction, etc.
4. In the said suit, 1st respondent contended that the said property belongs to his father and on his death, he inherited the same and got mutation done in the Revenue Records also and Pattadar Passbook and Title Deeds were issued to him. He alleged that respondents 2 and 3, who have no right in the property, were interfering with his possession and enjoyment over the said property.
5. Petitioner herein filed I.A.No.1217 of 2016 to implead itself as 3rd defendant in the said suit. It is contended that

the petitioner purchased Acs.3.30 gts., of land from out of Survey No.93 under a registered Sale Deed No.698/1997; that petitioner thereafter applied for construction of school and other buildings; that permission was obtained from Grampanchayat on 20.10.1999 and a school was constructed by the petitioner which is being run from 2008. It further contended that the property purchased by it falls within the suit schedule property and the petitioner is vitally interested in the outcome of the suit.

6. The said I.A. was dismissed by the trial Court on 10.07.2018. It referred to an Agreement of Sale allegedly pleaded by the petitioner as having been executed by the 1st respondent, but it observed that no such Agreement of Sale has been filed by the petitioner, and that if the 1st respondent succeeds in the suit, petitioner can seek relief from the 1st respondent and no title had passed to the petitioner till date.

7. Assailing the same, this Revision is filed.

8. Though in the impugned order there is a reference to the counter affidavit filed by the respondent, it appears that when the petitioner applied for certified copy of the same on 12.02.2019, said copy application was returned stating that there were no counter affidavit filed.

9. Counsel for the petitioner contended that the Court below erroneously referred to certain facts which have not been pleaded by the petitioner at all and misdirected itself and rejected petitioner's application for impleadment.

10. Though I find force in the said contention, the fact remains that purchase by the petitioner of Acs.3-30 gts of land in survey No.93 allegedly from the 1st respondent is in the year 1997, much prior to the filing of the suit by the 1st respondent on 14.03.2006.

11. Therefore, even assuming that the suit O.S.No.485 of 2006 is decreed, the said decree will not bind the petitioner because the transfer to the petitioner by the 1st respondent is not after the filing of the suit O.S.No.485 of 2006 on 14.03.2006 but long prior thereto in 1997. Thus the doctrine of *lis pendens* would have no application and the 1st respondent would not be representing the petitioner in respect of the property which was purchased by the petitioner(see **Kerala Finance Corporation vs. Syndicate Bank¹**).

12. Counsel for the petitioner sought to contend that the suit itself is a collusive suit, but even decree in such collusive

¹ AIR 1992 Kerala 213

suit would not be binding on the petitioner because of Section 44 of the Evidence Act, 1872.

13. Therefore, though the reasons given by the trial Court for refusing to implead the petitioner as a party in the suit may not be correct, since the Decree if any passed in O.S.No.485 of 2006 would not bind the petitioner, petitioner cannot be said to be a necessary or property party to the suit O.S.No.485 of 2006.

14. Therefore, this Civil Revision Petition is dismissed with the above observations. No order as to costs.

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

M.S. RAMACHANDRA RAO, J

11th March, 2019.

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