

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
And

THE HONOURABLE SRI JUSTICE T.VINOD KUMAR

Civil Miscellaneous Appeal No.860 of 2019

ORDER : (per Hon'ble Sri Justice M.S. Ramachandra Rao)

This Civil Miscellaneous Appeal is filed by the Appellants herein challenging the order dt.15.07.2019 passed in Interlocutory Application No.855 of 2019 in Original Suit No.4 of 2004 on the file of Principal District Judge, at L.B. Nagar, Ranga Reddy District.

The Suit

2. The appellants herein are plaintiff nos.2 to 5 in the above suit, and legal representatives of the deceased-sole plaintiff.
3. The said suit was filed by appellants against respondents for declaration of their title to the suit schedule property, to declare that a compromise decree and final decree passed in Original Suit No.180 of 1987 on the file of Principal Senior Civil Judge, Ranga Reddy District is not binding on the appellants; and for a perpetual injunction restraining respondents from interfering with the peaceful possession and enjoyment of appellants over the suit schedule properties.
4. The trial in the suit was completed and the matter was coming up for hearing of arguments.

I.A.No.855 of 2019

5. At that stage, I.A.No.855 of 2019 was filed by the General Power of Attorney holder of respondent nos.1 to 9 and 11 to 15 on behalf of respondents 3 to 9, 13 and 15 contending that during the pendency of the suit, the appellants had executed a Development Agreement-cum-Irrevocable General Power of Attorney dt.28.04.2017 in favour of M/s. Jai Sridevi Homes Private Limited and delivered possession of the suit schedule properties for development to it, and that the said Company was trying to get permission lay-out with regard to the properties mentioned therein. It was contended that by virtue of the said action the appellants had tried to render the suit to the extent of relief of declaration as null and void; that under Order XXII Rule 10(1) of Civil Procedure Code, 1908 there has been a devolution of interest by way of assignment through the said Development Agreement-cum-Irrevocable General Power of Attorney dt.28.04.2017 pending suit; and therefore, the said M/s. Jai Sridevi Homes Pvt. Ltd., represented by its Director, Sri M. Prakash Reddy, be impleaded as the 6th plaintiff in the suit. It was contended that the proposed party is a just and necessary party to continue the proceedings in the suit, and appellants may be directed to carry out amendment of the plaint with necessary pleadings.

Counter-affidavit of the appellants in I.A.NO.855 of 2019

6. Counter-affidavit was filed by appellants opposing the said application. While admitting the execution of the Development Agreement-cum-Irrevocable General Power of Attorney dt.28.04.2017

in favour of M/s. Jay Sridevi Homes Pvt. Limited, they contended that the said Development Agreement-cum-Irrevocable General Power of Attorney dt.28.04.2017 did not confer any right or interest on the developer; and it cannot be said to be an assignment of rights in favour of the developer. They also contended that respondent nos. 3 to 9, 13 and 15 cannot ask the Court to implead the said party as plaintiff No.6, because the plaintiff was the *dominus litis* and can decide for himself as to who should be the plaintiff, and respondent nos.3 to 9 and 13 and 15 cannot dictate terms to the appellants.

7. They also pointed out that the respondent nos.3 to 9, 13 and 15 had earlier filed Interlocutory Application No.1931 of 2017 to receive the Development Agreement-cum-Irrevocable General Power of Attorney dt.28.04.2017 and to mark it in evidence, but it was dismissed on 22.01.2018; that they later filed Interlocutory Application Nos.724 of 2018 and 752 of 2018 to receive Additional Written Statement, but these applications were also dismissed on 04.07.2018; that they then filed Interlocutory Application No.1477 of 2018 to re-call PW.2 for further cross-examination which was also dismissed on 04.02.2019; and the present Interlocutory Application is filed only with a view to delay the matter, when the matter is posted for addressing arguments by respondent nos.3 to 9 and 13 to 15.

The order dt.15.7.2019 in I.A.No.855 of 2019

8. By order dt.15.07.2019, the Court below allowed the said application and permitted M/s. Jay Sridevi Homes Pvt. Ltd. to be brought on record as plaintiff no.6 on the ground that the said party is claiming title or interest through the appellants, and the evidence already on record is to be treated as evidence on its behalf as well.

9. After referring to the contentions of parties and the case Law cited, the Court below referred to Order XXII Rule 10 of Civil Procedure Code, 1908 and also to the contents of the Development Agreement-cum-Irrevocable General Power of Attorney dt.28.04.2017, and observed that the recitals in the said document shows that plaint 'A' Schedule property is given for development and construction of residential flats whereby the proposed party is to deliver to the appellants 40% of the developed residential flats, and the proposed party would retain 60% of the developed residential flats; and therefore, 60% of the interest in the property had devolved on the proposed party. It held that there is no truth in the appellants' version that no interest is created or rights are conferred on the developer. It also observed that the objection of the appellants that they are *dominus litis* would not apply in this scenario since the proposed party is sought to be arrayed as plaintiff no.6 against whom the appellants are not seeking any relief.

10. Challenging the same, the present Civil Miscellaneous Appeal is filed.

11. Heard Sri Srinivas Polavarapu, counsel for appellants. None appears for respondents.

Contentions of counsel for Appellants

12. The counsel for appellants contended that firstly the appellants being plaintiffs are *dominus litis* and, therefore, without their consent the proposed party cannot be impleaded as plaintiff no.6 invoking Order XXII Rule 10 of Civil Procedure Code, 1908. He reiterated that under the Development Agreement-cum-Irrevocable General Power of Attorney dt.28.04.2017 no interest was created in favour of the proposed party. He also found fault with the action of respondent nos.3 to 9 and 13 and 15 in seeking to implead the proposed party as plaintiff No.6 instead of defendant in the suit.

13. The counsel for appellants relied on the following decisions, viz., **T. Ravi and another vs. B. Chinna Narasimha and others¹**; **Sharadamma vs. Mohammed Pyrejan (D) and others²**; **Life Insurance Corporation of India vs. Sanjeev Builders Pvt. Ltd. and others³**; **Mumbai International Airport Private Limited vs. Regency Convention Centre and Hotels Private Limited and others⁴**, and an unreported judgment of the Supreme Court rendered

¹ (2017) 7 S.C.C. 342

² (2016) 1 S.C.C. 730

³ (2017) 12 Scale 837

⁴ (2010) 7 S.C.C. 417

on 17.07.2019 in **Gurmit Singh Bhatia vs. Kiran Kant Robinson and others**⁵ in support of his contentions.

14. Order XXII Rule 10 of Civil Procedure Code, 1908 says that if there is any assignment, creation or devolution of interest during the pendency of a suit, the suit may, by Leave of the Court, be continued by or against the person to, or upon whom such interest has come or devolved.

15. In the instant case, there is no dispute that the appellants had executed the Development Agreement-cum-Irrevocable General Power of Attorney dt.28.04.2017 because in the counter-affidavit filed by the appellants in para no.3, this fact is admitted. The said document contains the following recital:

“In lieu of first party part with the Schedule ‘A’ property to enable the second party to make, develop and construction of residential apartments, the second party shall deliver to the first party 40% of the developed residential flats to be constructed thereon along with proportionate undivided share of land and the second party is entitled to retain remaining 60% of the developed residential flats to be constructed thereon along with proportionate undivided share of land “

16. In our considered opinion, this recital indicates that 60% of the interest in the property would devolve on the proposed party as and

⁵ Unreported decision of the Supreme Court in Civil Appeal Nos.5522-5523 of 2019

when he completes the development and construction of residential apartments within three (03) years by obtaining permission.

17. In the normal course, it is the person on whom the interest has devolved or the person who created such interest in a third-party, pending suit, who would file an application for impleadment of the said party by filing an application under Order I Rule 10 of Civil Procedure Code, 1908 or Order XXII Rule 10 of Civil Procedure Code, 1908.

18. The instant case is an unusual case where neither the appellants (who created such interest) nor the proposed party (in whom such interest is created) have taken any steps to do so. It is the respondent nos.3 to 9 and 13 and 15 who have moved Interlocutory Application No.855 of 2019.

19. No doubt, the said transaction is in the nature of a transfer *pendente lite* and, as held in **T. Ravi and another** (1) supra, it does not render the transfer or assignment to be null and void but only renders it subservient to the rights of the parties to the litigation.

20. In **Sharadamma** (2) supra, pending a regular First Appeal before the High Court against the decree of the Trial Court dismissing the suit for declaration of title and for restoration of possession, the appellant / plaintiff released her interest in the suit property in favour of her daughter and the daughter in turn had transferred the property to a third-party. The High Court dismissed the Appeal filed by the

plaintiff on the ground that she lost her right to continue the Appeal on account of the above transfers. This was challenged in the Supreme Court. The Supreme Court reversed the decision of the High Court and held that due to assignment or release of rights during pendency of the Appeal, the appellants did not in any manner lose the right to continue the Appeal. It held that by such transfer during pendency of the suit or the appeal, the plaintiff or appellant ordinarily has a right to continue the appeal, and it is at the option of the assignee to move an application for impleadment. The Court therefore held that there cannot be any dismissal of the suit or trial on account of the failure of assignee to file an application to continue the proceedings and it would be open to the assignee to continue with the proceedings notwithstanding the fact that he ceased to have any interest in the subject-matter of the dispute. The Court went on to say that a devolution of interest during pendency of a suit entitles the assignee to acquire interest to apply to the Court for leave to continue with the suit, but he is not obligated to do so. The Court observed that otherwise he would be running the risk of the suit being not properly conducted by the plaintiff on record.

21. This judgment in our considered opinion does not say that there is any prohibition for the defendants in the suit / respondents to file an application to implead the assignee, pending suit in a situation where neither the appellants nor the assignee from the appellants filed any application for impleadment of the assignee.

22. In **Life Insurance Corporation of India** (3) supra, the Supreme Court considered Order XXII Rule 10 and observed that if an assignee of rights of a party in a suit comes forward to be brought on record, the Court has a discretion to implead or not to implead him, and such discretion must be exercised judiciously and not arbitrarily. It even went to the extent of saying that the Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit. In that case, application under Order XXII Rule 10 of C.P.C. seeking relief of the Court to continue with the suit was not filed by the assignee, but chamber summons were straightaway filed praying to amend the suit with (27) years delay, and so, on the facts of the case the Supreme Court did not permit the amendment.

23. This decision also does not assist the appellants because, in the instant case, the Development Agreement-cum-Irrevocable General Power of Attorney dt.28.04.2017, and the application under Order XXII Rule 10 of Civil Procedure Code, 1908 was filed on 23.04.2019 while the suit was still pending.

24. The decision in **Mumbai International Airport Private Limited** (4) supra deals with impleadment of parties in a suit for specific performance and certain general observations were made with

regard to the exercise of power by the Court when Order I Rule 10(2) of Civil Procedure Code, 1908 is invoked for adding a party. The said decision did not deal with Order XXII Rule 10 of Civil Procedure Code, 1908. Also, the instant suit is not a suit for specific performance. Therefore, the said decision also has no relevance.

25. The unreported decision of the Supreme Court in **Gurmit Singh Bhatia** (5) supra also dealt with a suit for specific performance and the power of the Court under Order 1 Rule 10 of Civil Procedure Code, 1908 to implead a purchaser from the original owner who had sold the property to the purchaser in violation of order an order of injunction restraining him from alienating the property. The said decision also has no application to the facts of the present case.

26. In **Amit Kumar Shaw v. Farida Khatoon**⁶, the Supreme Court considered both Order I Rule 10 of Civil Procedure Code, 1908 and Order XXII Rule 10 of Civil Procedure Code, 1908. The Court observed that under Order XXII Rule 10 of Civil Procedure Code, 1908, no detailed enquiry at the stage of granting leave is contemplated, and the Court has only to be *prima facie* satisfied for exercising its discretion in granting leave for continuing with the suit by or against the person on whom the interest is devolved by assignment or devolution. It observed that the question about existence and validity of the assignment or devolution can be considered at the final hearing of the proceedings. It observed that

⁶ (2005) 11 S.C.C. 403

though a plaintiff is under no obligation to make a *lis pendens* transferee a party, under Order XXII Rule 10 of Civil Procedure Code, 1908 an alienee *pendente lite* may be joined as a party, and that an alienee would be ordinarily joined as a party to enable him to protect his interests.

27. This principle was reiterated in **Chandra Bai v. Khandalwal Viprs Vidyalaya Samiti**⁷. The Court went further and held that unlike Order XXII Rules 3 and 4 of Civil Procedure Code, 1908, no limitation is prescribed for presentation of an application under Order XXII Rule 10 of Civil Procedure Code, 1908, and that an application under that provision can be made at any time during the pendency of the suit.

28. In view of these decisions and the principles laid down therein, we are of the opinion that firstly the Court below had rightly exercised its jurisdiction under Order XXII Rule 10 of Civil Procedure Code, 1908 to implead M/s. Jay Sreedevi Homes Pvt. Ltd. as 6th plaintiff in the suit. No prejudice is caused to appellants since the execution of the Development Agreement-cum-Irrevocable General Power of Attorney dt.28.04.2017 by them in favour of the said party is admitted by them, and even if the appellants or the proposed party do not move such application under Order XXII Rule 10 of Civil Procedure Code, 1908 to implead the proposed party, there is no bar for the respondent nos.3 to 9 and 13 and 15 to file such an application.

⁷ (2016) 12 S.C.C. 534

29. Therefore, for all the aforesaid reasons, we find no merit in the Civil Miscellaneous Appeal. It is accordingly dismissed. No order as to costs.

30. As a sequel, miscellaneous petitions pending if any in this Civil Miscellaneous Appeal, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE T.VINOD KUMAR

Date: 01.10.2019

Ndr/*

