

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

CRP.No.4406 of 2018

O R D E R:

Heard counsel for the revision petitioner. None appears for respondents though notice has been served on the respondents.

2. This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.16.07.2018 in I.A.No.550 of 2016 in O.S.No.91 of 2012 of the Senior Civil Judge, Sathupally.

3. Petitioner herein was a third party to the above suit.

4. The 1st respondent filed the said suit against the 2nd respondent seeking specific performance of an Agreement of Sale dt.14.11.2011 executed by the 2nd respondent in favour of the 1st respondent.

5. The 2nd respondent filed written statement therein denying execution of the said Agreement of Sale and contending that it is a fabricated one. He also denied that he sold the property to 1st respondent at any point of time.

6. While the suit was pending, petitioner herein filed O.S.No.22 of 2013 before the Senior Civil Judge, Sattupally against the 2nd respondent for specific performance of a different Agreement of Sale dt.15.05.2007 allegedly executed by 2nd respondent in favour

of the petitioner. The 2nd respondent became *ex-parte* and an *ex-parte* decree was passed therein on 28.06.2013.

7. On coming to know of it, the 1st respondent filed I.A.No.550 of 2016 in O.S.No.91 of 2012 to implead the petitioner herein as 2nd defendant in the suit.

8. In the affidavit filed in support of the said application he stated that the petitioner is a relative of the 2nd respondent and the *ex-parte* decree in O.S.No.22 of 2013 was obtained allegedly on the basis of an Agreement of Sale dt.15.05.2007, and when the 1st respondent filed I.A.No.151 of 2014 and I.A.No.153 of 2013 under Order VI Rule 17 CPC and Section 151 CPC seeking permission to amend the plaint and also seeking stay of the decree in O.S.No.22 of 2013, the Court had advised the 1st respondent to implead the petitioner herein as a party in O.S.No.91 of 2012, and so he was filing the said I.A.

9. Counter affidavit was filed by the 2nd respondent opposing the said application and stating for the first time that he had sold the suit schedule property to the petitioner on 15.05.2007 and that there was an *ex-parte* decree obtained by the petitioner against him in O.S.No.22 of 2013 on 28.06.2013.

10. Petitioner also filed a counter affidavit reiterating the same thing.

11. By order dt.16.07.2018 the Court below allowed I.A.No.550 of 2016. After recording the contentions of both sides and referring to Order I Rule 10(2) CPC, the Court below held that 2nd respondent herein had sold the property both in favour of the petitioner as well as the 1st respondent, and therefore there is ambiguity, which would have to be decided only after full-fledged trial.

12. Assailing the same, this Revision is filed.

13. Counsel for the petitioner contends that the order passed by the Court below is unsustainable and the petitioner ought not to have been impleaded in the suit filed by the 1st respondent against 2nd respondent. He also stated that he had already obtained a decree against the 2nd respondent in O.S.No.22 of 2013 on 28.06.2013 and prejudice would be caused to him if he is impleaded in the present suit.

14. In the grounds of Revision, he has also stated that doctrine of *lis pendens* would apply. He placed reliance on the judgment in ***Kasthuri Vs. Iyyamperumal and Others***¹.

15. From the facts narrated above, it is clear that the 1st respondent had filed O.S.No.91 of 2012 on the basis of an Agreement of Sale dt.14.11.2011 executed in his favour by the 2nd respondent.

¹ 2005(6) SCC 733

16. In the Written Statement filed by the 2nd respondent in O.S.No.91 of 2012 he simply denied execution of said Agreement of Sale, but did not disclose that he had already executed in favour of the petitioner an Agreement of Sale on 15.05.2007.

17. Subsequently in 2013, petitioner filed O.S.No.22 of 2013 and obtained an *ex-parte* decree against the 2nd respondent on 28.06.2013.

18. When the petitioner came to know of it, he filed the I.A.No.550 of 2016 to implead the petitioner as 2nd defendant in the suit to bring to the notice of the Court these facts and also mentioning that when he filed I.A.No.151 of 2014 and 153 of 2013 for amendment of the plaint, Court itself advised him to implead the petitioner herein in O.S.No.91 of 2012.

19. Thus, it is clear that the petitioner is also claiming through the 2nd respondent, though under alleged prior Agreement of Sale dt.15.05.2007, which was suppressed by the 2nd respondent in his written statement in O.S.No.91 of 2012.

20. Section 19 of the Specific Relief Act, 1963 (for short 'the Act') states that:

“Sec.19: Relief against parties and persons claiming under them by subsequent title.—Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

- (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 the 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."*

21. Under Section 19(b) of the Act, specific performance of an agreement may be enforced against any other person claiming under him by a title arising subsequently to the contract except a transferee for value, who has paid money in good faith and without notice of the original contract.

22. In the instant case, whether the petitioner is a transferee for value who has paid his money in good faith and has no notice of the contract with the 1st respondent, is a matter to be gone into in trial, and cannot be pre-judged at this point of time.

23. In **Kasthuri's** case(1 supra) cited by the counsel for petitioner, the Supreme Court considered the above provision and held that persons seeking addition in the suit for specific performance of contract for sale, who were not claiming under the

vendor but were claiming adverse to the title of the vendor, do not fall in any of the categories enumerated in sub-section (a) to (e) of Section 19 referred to above.

24. It is not the case of the petitioner that he is not claiming through the 2nd respondent but he is claiming title adverse to the 2nd respondent. So he does not fall within any of the categories mentioned in sub-section (a) to (e) of Section 19.

25. The Supreme Court in **Kasthuri's** case(1 supra) also observed that in a suit for specific performance a purchaser is a necessary party as he would be affected if he had purchased with or without notice of the contract, and that under Order 1 Rule 10(2) CPC, the Court has got the power to implead persons, who ought to have been joined or whose presence before the Court may be necessary in order to enable the Court effectively and completely to adjudicate upon and settle all the questions involved in the suit.

26. Applying the above decision, I am satisfied that the Court below did not commit any error in impleading the petitioner as a party in O.S.No.91 of 2012.

27. I therefore do not find any merit in this Civil Revision Petition and it is accordingly dismissed. No order as to costs.

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

M.S. RAMACHANDRA RAO, J

28th June, 2019

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