

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.2835 of 2014

ORDER :

Heard both sides.

2. This Civil Revision Petition is filed by petitioner under Article 227 of the Constitution of India challenging the Order dt.24.01.2014 passed in I.A.No.493 of 2013 in O.S.No.388 of 2010 on the file of the Principal Junior Civil Judge, Mancherial.

3. The petitioner herein is plaintiff in the above suit.

4. He filed the said suit for partition of plaint schedule properties against respondent nos.1 to 4 initially, and for allotment of 1/4th share to him.

5. While the above suit was pending, the petitioner filed I.A.No.493 of 2013 to implead respondent nos.5 to 40 in the suit alleging that respondent nos.7 and 8 are his sisters; that respondent nos.5 and 6 are children of 1st respondent; that during pendency of suit, defendant nos.1 to 4 had sold the suit schedule property in favour of respondent nos.8 to 40; and therefore, all of them need to be impleaded as parties to the suit.

6. Counter-affidavit was filed by 1st respondent contending that since the sales are *lis pendens*, it is not necessary to implead the purchasers. It was also contended that the suit schedule property indivisible.

7. The respondent nos.32 to 40 also filed a counter-affidavit opposing the said application stating that petitioner did not initially implead the purchasers as parties to the suit though he has knowledge of the same, and because of such alleged willful negligence, the application requires to be dismissed. It was also stated that respondent nos.32 to 40 are *bona fide* purchasers of portions of the suit schedule property, and they had no knowledge about the pendency of suit, and they cannot be troubled to contest the suit.

8. By order dt.24.01.2014, the Court below partly allowed the said application as regards respondent nos.5 to 8 who are relatives of petitioner's family, but refused to implead the subsequent purchasers, viz., defendant nos.9 to 40. It referred to the decision of the Supreme Court in **Sarvinder Singh vs. Dalip Singh**¹ which held that sale of suit property in contravention of Section 52 of Transfer of Property Act, 1882 would be hit by the doctrine of *lis pendens*, and alienees *pendente lite* cannot be impleaded in the suit. It observed that purchasers *pendente lite* cannot be impleaded in the suit, and they are neither necessary or proper parties in the suit.

9. Challenging the same, the present Civil Revision Petition is filed.

10. Though Notice has been served on all the respondents, there is no representation on their behalf.

¹ 1996 (5) S.C.C. 539

11. One A. Narasimha filed *vakalat* on behalf of respondent nos.32 to 40, but has not appeared before this Court to make any submissions.

12. The counsel for petitioner relied on the decision in **Dhanlakshmi and others vs. P. Mohan and others**² wherein the Supreme Court held that purchasers *pendente lite* of property which is subject matter of a partition suit, are entitled to be impleaded in order to work out equity in their favour in their final decree proceedings.

13. In **A. Nawab John vs. V.N. Subramaniam**³, the Supreme Court again reiterated that when a *pendente lite* purchaser seeks to implead himself as a party defendant to the suit, such application should be liberally considered and that he must be given an opportunity to protect his rights. It also referred to a dissenting view in **Amit Kumar Shaw and others vs. Farida Khatoon and others**⁴ to the contra, but held that the preponderance of opinion of Supreme Court is that *pendente lite* purchaser's application for impleadment, should normally be allowed or considered liberally.

14. Having regard to the above decisions of the Supreme Court in **Dhanlakshmi** (2 supra) and **A. Nawab John** (3 supra), I am of the opinion that the purchasers *pendente lite* also can be impleaded in a suit as their rights would be affected, because it is settled law that a *pendente lite* transfer is not void and would be subject to the result in

² Order dt.17.01.2007- Indian Kanoon – <http://indiankanoon.org/doc/1413126/>

³ 2012 (6) A.L.D. (S.C.) 102

⁴ (2005) 11 S.C.C. 403

the suit, and it would be easy for the Court to work-out equity in favour of such people also in the final decree proceedings.

15. Accordingly, the Civil Revision Petition is allowed. The order dt.24.01.2014 passed in I.A.No.493 of 2013 in O.S.No.388 of 2010 on the file of the Principal Junior Civil Judge, Mancherial is set aside, and the said I.A. is allowed. No order as to costs.

16. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 19.06.2019

Ndr/*

