

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.1072 of 2013

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.12-02-2013 in I.A.No.853 of 2012 in O.S.No.967 of 2009 of the II Additional Junior Civil Judge, Ranga Reddy District at L.B. Nagar.

2. Petitioner herein is a third party to the suit.
3. The suit had been filed initially as O.S.No.2261 of 2006 by the 1st respondent herein against respondent Nos.2 to 13 before the Additional Junior Civil Judge, Ranga Reddy District at L.B. Nagar for a perpetual injunction restraining respondent Nos.2 to 13 from interfering with 1st respondent's alleged possession and enjoyment of the suit schedule property.
4. The suit was later transferred to the Court of II Additional Junior Civil Judge, Ranga Reddy District and renumbered as O.S.No.967 of 2009.
5. While so, petitioner herein purchased from the 1st respondent the suit schedule property under a registered sale deed dt.28-04-2007. She contended that ever since the date of purchase, she is in possession and enjoyment of the suit schedule property, that she also raised a structure in it and she had clear right, title and interest in the suit schedule property. She stated that she came to know about the

pendency of the suit between her predecessor and respondent Nos.2 to 13 and sought to get impleaded as 2nd plaintiff in the suit.

6. The 1st respondent did not oppose her impleadment.

7. The 5th respondent filed a counter-affidavit on behalf of himself and defendant Nos.1, 3, 5, 6 and 8 to 12. He contended that petitioner was aware of the pendency of the civil suit between 1st respondent and themselves as she is close relative to the 1st respondent and had also previously worked as Sarpanch of Narsingi village. It is alleged that she had filed this implead application only to drag on the matter and cause delay in disposing of the suit and she is not a necessary and proper party to the suit.

8. By order dt.12-02-2013, the Court below dismissed the said I.A. It held that relief of injunction is a relief which is personal in nature and cause of action will arise in favour of the 1st respondent against rest of the respondents as on the date of suit, that subsequent developments do not give rise to any new cause of action, and third parties cannot get impleaded in a suit for injunction as a matter of course. It held that there is no cause of action in favour of the petitioner in the plaint and even if she is impleaded in the suit, she would not have a cause of action against respondent Nos.2 to 13.

9. It directed the petitioner to file a fresh suit against respondent Nos.2 to 13.

10. Challenging the same, this Revision is filed.

11. Learned counsel for petitioner relied on decision of the Supreme Court in **Amit Kumar Shaw and another Vs. Farida Khatoon and another**¹.

12. In that case the Supreme Court interpreted Order I Rule 10(2) C.P.C., Order XXII Rule 10 C.P.C. and Section 52 of Transfer of Property Act, 1882, and observed that the object of Order 1 Rule 10 is to discourage contests on technical pleas, and to save honest and *bona fide* claimants from being non-suited. It observed that the power to strike out or add parties can be exercised by the Court at any stage of the proceedings and a person may be added as a party to a suit when he ought to have been joined as plaintiff or defendant, and is not joined so, or when, without his presence, the questions in the suit cannot be completely decided. It observed that all these provisions can be invoked and the power of a Court to add a party to a proceeding can not depend solely on the question whether he has interest in the suit property. It held that the test is that whether right of a person may be affected if he is not added as a party. It held that when an application under Order XXII Rule 10 C.P.C. is filed, the Court needs to be *prima facie* satisfied that the person who filed the application is required to be impleaded and existence and validity of the assignment or devolution can be considered at the final hearing of the proceedings. It also observed that an alienee *pendente lite* is bound by the final decree that may be passed in the suit and such an alienee can be brought on record both under this rule as also under Order I, Rule

¹ AIR 2005 SC 2209

10 C.P.C. It observed that since under the doctrine of *lis pendens*, a decree passed in the suit during the pendency of which a transfer is made binds the transferee, his application to be brought on record should ordinarily be allowed. It observed that the transferee *pendente lite* can be added as a proper party if his interest in the subject-matter of the suit is substantial and not just peripheral. According to it, a transferee *pendente lite* to the extent he has acquired interest from the defendant is vitally interested in the litigation, whether the transfer is of the entire interest of the defendant; and the latter, having no more interest in the property, may not properly defend the suit or he may collude with the plaintiff. It observed that though the plaintiff is under no obligation to make a *lis pendens* transferee a party, under Order XXII, Rule 10, an alienee *pendente lite* may be joined as party and the discretion of the Court in the matter must be judicially exercised, and an alienee would ordinarily be joined as a party to enable him to protect his interest.

13. Though learned counsel for respondent sought to rely on the judgment of a learned Single Judge of this Court in **Major P.T.Choundary Vs. Mohammed Abdul Basheer Khan and others**², in which a learned Single Judge of this Court relied upon the judgment in **Sarvinder Singh Vs. Dalip Singh**³, since the view in the said judgment has been dissented in **Amit Kumar Shaw** (1 supra), I deem it appropriate to follow the latter judgment of the Supreme Court.

² 2007(2) ALD 675

³ (1996) 6 SCC 50

14. Coming to the instant case, having sold the property, the 1st respondent might not show any interest in contesting the case against respondent Nos.2 to 13 and might have colluded with respondent Nos.2 to 13 causing grave prejudice to the petitioner.

15. That apart, the purpose of impleadment of parties is to avoid multiplicity of proceedings also, and compelling the petitioner to file a fresh suit is not in the interest of justice since the petitioner claimed to have purchased the suit schedule property under a registered sale deed and has claimed to be in possession. Her interest is substantial and is not peripheral and therefore the Court below ought to have impleaded her as a party in the suit.

16. Accordingly, the Civil Revision Petition is allowed; order dt.12-02-2013 in I.A.No.853 of 2012 in O.S.No.967 of 2009 of the II Additional Junior Civil Judge, Ranga Reddy District is set aside; and the said I.A. is allowed.

17. Since the suit is of the year 2006, both parties shall cooperate for the expeditious disposal of the case. No costs

18. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 29-07-2019

Vsv