

HON' BLE SRI JUSTICE M. S. RAMACHANDRA RAO

CIVIL REVISION PETITION Nos. 7748, 7750 & 7798 of 2018

COMMON ORDER:

These three petitions arise between the same parties, arising out of the same suit and so they are being disposed of by this common order.

Petitioners herein are plaintiffs in O.S.No.1040 of 2017 on the file of XXV Additional Chief Judge, City Civil Court at Hyderabad.

They filed the said suit against respondent Nos.1 to 8 for declaration of title and for recovery of the possession of the plaint schedule property and mesne profits, in respect of plaint 'A' and 'B' schedule properties.

While suit was pending, they filed I.A.No.1909 of 2017 to grant temporary injunction under Order 39 Rule 1 and 2 C.P.C. restraining the original defendants/ respondent Nos.1 to 8 from alienating the suit schedule properties.

They also filed I.A.No.1910 of 2017, seeking temporary injunction restraining respondent Nos.1 to 8 from raising any construction whatsoever over the suit schedule properties and changing the nature thereof.

While those applications are pending, the plaintiffs contended that there was a sale by respondent No.1 in collusion with respondent No.9 and sale deeds were executed by them in favour of respondent Nos.10 to 17. They therefore sought to implead respondent Nos.9 to 17 in I.A.No.1909 of 2017 by filing I.A.No.253 of 2018, in I.A.No.1910 of 2017 by filing I.A.No.252 of 2018 and in the suit itself by filing I.A.No.251 of 2018 and they also sought consequential amendment to para No.7 of the plaint in the said I.As.

Counter affidavit was filed by respondent Nos.1 to 8 opposing the said applications. They contended that the sale deeds executed by respondent No.1 are valid documents, that the proposed parties are lawful owners and possessors of their respective extents in the suit schedule properties and the petitioners/plaintiffs have to file a separate suit challenging those sale deeds and they have no right to implead proposed parties in the suit or in the I.As.; and the applications were filed to harass the respondents.

Vide separate orders passed on 13.12.2018, all the three applications were rejected.

The Court below observed that it was incumbent on the part of the petitioners to seek a prayer in the suit challenging the sale deeds executed by respondent No.1 in favour of respondent Nos.10 to 17, pay Court fee there on because the

documents under which respondent Nos.10 to 17 had purchased are prior to the filing of the suit and the doctrine of *lis pendens* would not apply. It therefore concluded that unless the validity of the sale deeds were challenged, the proposed parties cannot be impleaded in the suit and in the I.As.

Assailing the same, these revisions are filed.

Learned counsel for the petitioners would contend that the Court below had committed an error in law in requiring the petitioners to challenge the sale deeds executed by respondent No.1 in favour of respondent nos.10 to 17, that infact there is no such requirement in law and since the prayer in the suit is for declaration of title and recovery of possession, the petitioners are entitled to implead respondent Nos.9 to 17 in the suit and in the I.As. and the consequential amendment in the suit also is required to be ordered. Learned counsel also relied on the decision of this Court in *Nade Ali Mirza and others v. Khalida Mohammed Salim Dawawala and others*¹.

Learned counsel for the respondents refuted the said contention and supported the order passed by the Court below.

In the judgment of this Court referred to above, the question where the plaintiff is not a party to the sale deed/ conveyance deed whether he is bound to seek its cancellation was considered. This Court followed the decision of the

¹ 2016 (1) ALD 318

Supreme Court in *Suhrid Singh v. Randhir Singh*² and held that parties who are not executants of documents and who seek to have the documents declared as null and void and not binding need not seek relief of cancellation of the documents in question. It held that they need not pay Court fee under Section 37 of the A.P. Court Fee and Suit Valuation Act. It also held that if plaintiff was not a party to the registered sale deed, he need not ask for cancellation of it and it is sufficient if he seeks a declaration that the deed is invalid/void and non est/illegal and he is not bound by it.

This legal decision is not disputed by the learned counsel for the respondents.

Therefore, I hold that the Court below erred in holding that the petitioners should have sought for a cancellation of the sale deeds in favour of the proposed parties and then only can seek for impleadment of respondent Nos.9 to 17 in the suit and in the I.As.

Accordingly, all the three revisions are allowed. Orders dated 13.12.2018 in I.A.Nos.251 of 2018 in O.S.No.1040 of 2017, I.A.No.253 of 2018 in I.A.No.1090 of 2017 in O.S.No.1040 of 2017 and order in I.A.No.252 of 2018 in I.A.No.1910 of 2018 in O.S.No.1040 of 2017 are all set aside and I.A.Nos.251, 252 and 253 of 2018 are allowed. There shall be no order as to costs.

² AIR 2010 SC 2807

As a sequel thereto, Miscellaneous Petitions pending if any
in these Civil Revision Petitions, shall stand closed.

M.S.RAMACHANDRA RAO

09.04.2019
vnb

