

HON'BLE SRI JUSTICE A.SANTHOSH REDDY

C.R.P.No.3609 OF 2018

ORDER:

This civil revision petition under Article 227 of the Constitution of India is directed against the order dated 22.09.2017 in I.A.No.414 of 2016 in O.S.No.326 of 2014, on the file of the III Additional District Judge, Ranga Reddy District at L.B.Nagar.

2. Heard the learned counsel for the petitioners. None appeared for the respondents. Perused the record.

3. The 1st respondent/plaintiff herein filed the suit against respondent Nos.2 to 12 in O.S.No.326 of 2014 for partition and separate possession of the suit schedule property. The suit was coming-up for filing written statement. While so, the first respondent filed the present application under Order I Rule 10 of the Code of Civil Procedure,1908 (C.P.C.) to implead the petitioners and respondent Nos.13 to 15 as defendant Nos.12 to 17 in the main suit.

4. The petitioners herein and respondent No.14 filed counter resisting the application. On consideration of the material on record, the trial Court allowed the application. Aggrieved by the same, the present civil revision petition is filed.

5. Learned counsel for the petitioners submits the trial Court committed error in allowing the application to add the petitioners along with respondent Nos.13 to 15 as defendant Nos.12 to 17. He mainly submits that the petitioners purchased the plots for valuable sale consideration under registered sale deeds and they constructed the compound wall much prior to filing of the suit. He submits that they are not proper and necessary parties to be impleaded. Therefore, he prays to set aside the impugned order. He placed reliance on the decisions of **Janardhanam Prasad v. Ramdas**¹, **Ram Niwas (Dead) through LRs. V. Bano (Smt)**² and **V.Bali Reddy v. Divisional Engineer, APSEB (Operation), Nandyal**³.

5. At this juncture, it is relevant to refer the dictum of **Amit Kumar Shaw v. Farida Khatoon**⁴, wherein the Apex Court at para Nos.9 and 10 held as under:

9. 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. The power to strike out or add parties can be exercised by the Court at any stage of the proceedings. Under this Rule, a person may be added as a party to a suit in the following two cases: (1) When he ought to have been joined as plaintiff or

¹ (2007) 15 Supreme Court Cases 174

² (2000) 6 Supreme Court Cases 685

³ 1999 (2) ALD 668

⁴ (2005) 11 Supreme Court Cases 403

defendant, and is not joined so, or (2) When, without his presence, the questions in the suit cannot be completely decided.

10 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. The question is whether the right of a person may be affected if he is not added as a party. Such right, however, will include necessarily an enforceable legal right.

In **Kasturi v. Iyyamperumal**⁵, the Apex Court at para No.7 held as under:

7. In our view, a bare reading of this provision, namely, second part of Order 1 Rule 10 sub-rule (2) CPC would clearly show that the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead, their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with or without notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are — (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party.

6. In the instant case, in the accompanying affidavit of the present application, respondent No.1 specifically pleaded that on 15.04.2016, when she visited the village, she came to know that the petitioners and respondent Nos.13 to 15 herein, who are proposed defendant Nos.12 to 17 allegedly purchased plots under registered sale deeds.

⁵ (2005) 6 Supreme Court Cases 733

Respondent No.13 purchased plot bearing Nos.473, 474 and 475 in sy.Nos.530/A, 530/AA, 531/A and 531/AA totally admeasuring 642.00 square yards under registered sale deed dated 27.02.2003. Petitioner No.1 allegedly purchased plots admeasuring 2400.00 square yards under registered sale deeds on 28.04.2005 in survey numbers mentioned in the application. Respondent No.14 allegedly purchased plot admeasuring 400.00 square yards in Sy.Nos.529 and 530 under registered sale deed, dated 27.03.2006. Petitioner No.2 allegedly purchased plot admeasuring 400 square yards under registered sale deed dated 11.11.2006. Petitioner No.3 allegedly purchased plot bearing No.345 admeasuring 211.00 square yards in survey numbers mentioned in the application under registered sale deed dated 30.11.2006 and respondent No.15 allegedly purchased plot bearing No.410/C admeasuring 1111.11 square yards in Sy.Nos.529/A and 529/AA under registered sale deed, dated 22.08.2003. It is stated that the property allegedly purchased by the proposed defendants forms part of the suit schedule property. As such, to avoid multiplicity of litigation, they have to be impleaded as defendant Nos.12 to 17 in the main suit.

7. On the other hand, it is the case of respondent Nos.13, 15 and 16 that neither the respondent No.1/plaintiff nor respondent Nos.4 and 5/defendant Nos.2 and 3 nor their father were ever in possession of the suit land. The present suit is a collusive one and got filed by respondent No.1 and others. In fact, he also joined along with his father late P.Ramulu, who sold the entire land during his life time to V.Mohan Reddy and others under registered sale deeds bearing document Nos.226 and 227 of 2001 dated 30.12.2000 and he was co-vendor under these documents. The said purchasers V.Mohan Reddy and others divided the property into plots and sold the same to number of third party purchasers including one L.Srinivas, L.R.Subba Reddy and others, who purchased 12 plots of 200 square yards and constructed basement around the plots and in turn sold the plots to petitioner Nos.1 and 2, respondent Nos.14 and 16 and they are in possession of the plots by constructing compound walls much prior to the suit filed by respondent No.1. Respondent No.1/plaintiff and respondent Nos.2 to 11/ defendant Nos.1 to 11 have got actual and constructive notice of the title and possession of the petitioners herein and the suit claim is barred by limitation. They deliberately filed

collusive suit. The petitioners are not proper and necessary parties to be impleaded.

8. Keeping in view the above settled principles of law, let me now consider in the present case, whether any relief against the proposed parties in respect of the controversies involved in the present suit and whether an effective decree can be passed in their absence. A categorical reading of the pleadings of the plaint, it emerges that no relief is claimed against the petitioners and other proposed defendants. As stated supra, the petitioners have purchased the plots way back in the years 2003, 2005 and 2006 respectively, much prior to filing of the suit and constructed compound wall, obtained electricity connections. Respondent No.1 filed present suit in the year 2014. Order I Rule 10 CPC enables the Court to implead a person as a party defendant whose presence is considered necessary to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit. In the instant case, respondent No.1 has not given any specific reasons as to the necessity to implead the petitioners in the suit, except stating that she is entitled for 1/6th share in the suit schedule property and to avoid multiplicity of litigation, they are proper and necessary parties. Therefore, the said

pleadings are not sufficient to hold that the petitioners are necessary to be impleaded as party defendants to effectually and completely adjudicate upon and settle all the questions involved in the suit.

9. Having regard to the nature of the suit, it is held that since there is no relief claimed against the petitioners and there is no controversy against them in the suit, they are not necessary parties to be impleaded as party defendants, as an effective decree can be passed in their absence. Therefore, the impugned order, allowing the application filed by respondent No.1 for impleadment, is, held liable to be set aside.

10. In the result, the Civil Revision Petition is allowed. The impugned order is set aside. Consequently, I.A.No.414 of 2016 stands dismissed. There shall be no order as to costs. Miscellaneous petitions, pending, if any shall stand closed.

A.SANTHOSH REDDY, J

21.12.2022

Nvl

