

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**MONDAY ,THE TWENTIETH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY THREE**

PRESENT

THE HONOURABLE SRI JUSTICE A.VENKATESHWARA REDDY

CIVIL REVISION PETITION NO: 2611 OF 2022

Civil Revision Petition under Article 227 of the Constitution of India, against the Order and Decreetal order Dt.16/09/2022 passed in I.A.650 of 2022 in O.S.No.111 of 2016, on the file of the Court of the XXVII Addl. Chief Judge, City Civil Court, At . Secunderabad

Between:

Smt.M.MAMATHA, wife of M.Gopi Krishna, aged about 41 years, Occ : Business, Resident of 1-5-8, Dhanbazar, General Bazar, Secunderabad, T.S.

...REVISION PETITIONER/PROPOSED PARTY

AND

1. Mrs. ALKA JHUNJHUNWALA, wife of Mr.Ashok Umar Jhunjhunwala, aged about 63 years, Occ . Housewife.
2. Mrs.CHANDRAKALA JHUNJHUNWALA, wife of Mr.S.S.Jhunjhunwala, aged about 85 years, Occ . Housewife

Both residents of Plot bearing Nos.3 (part) and 4, Kausalya Cooperative Housing Society Limited, Kakaguda Village, Secbad

3. M/s.R.V.HOMES (INDIA) PRIVATE LIMITED, Registered Office at 5-9-30/17a, U.. Residency, Palace Colony, Road No.2, Basheerbagh, Hyderabad 500063, Rep. by is Director Mr.Rakshit Agarwal

...RESPONDENTS/PLAINTIFFS/DEFENDANT

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased To stay all further proceedings in O.S.NO.111 of 2016, on the file of the XXVII Addl. Chief Judge, City Civil Court, At Secunderabad.

Counsel for the Petitioner: SRI. T. KRISHNA KUMAR

Counsel for the Respondent No.1 & 2: SRI ZEESHAN ADNAN MAHMOOD

Counsel for the Respondent No.3: SRI MANU

The Court made the following:

THE HON'BLE SRI JUSTICE A.VENKATESHWARA REDDY

CIVIL REVISION PETITION No.2611 of 2022

ORDER:

This Civil Revision Petition is filed assailing the order dated 16.09.2022 in I.A.No.650 of 2022 in O.S.No.111 of 2016 on the file of the learned XXVII Additional Chief Judge, City Civil Court, Secunderabad.

2. This application in I.A.No.650 of 2022 was filed by the proposed party under Order 1, Rule 10(2) of Civil Procedure Code (for short 'CPC') read with Rule 28 of Civil Rules of Practice for impleadment as defendant No.2 in the Original Suit. The trial Court, upon consideration of the entire material on record and the rival contentions, dismissed the said application. Feeling aggrieved by the orders dated 16.09.2022 the proposed party has filed this civil revision petition.

3. Heard learned counsel for the petitioner and respondents. The submissions made on either side have received due consideration of this Court.

4. As per the averments in supporting affidavit in I.A.No.650 of 2022 it is pleaded by the proposed party that she is the absolute owner and possessor of the premises of ground plus two upper floors and servant quarters, totally admeasuring 8,400 sft., on plot No.3 (Part) and plot No.4 in Sy.Nos.58 and 59/1 admeasuring 894.31 Sq.Yards in the layout of Kausalya Co-operative Housing Society Limited, Kakaguda Village, Secunderabad having purchased the same through a registered sale deed dated 07.03.2022 from the agreement of sale-cum-GPA holder, the respondent No.3/defendant No.1 M/s.RV Homes (India) Private Limited, represented by its Director and the mutation was also effected in to her name.

5. Whereas, this application is resisted by the respondents/plaintiffs stating that the alleged transaction has taken place during pendency of the suit causing irreparable loss to the plaintiffs. In-fact, the plaintiffs have filed the Original Suit in O.S.No.111 of 2016 for cancellation of the said agreement of sale-cum-GPA document No.25 of 2013 dated 31.12.2012 executed in favour of defendant No.1 and for perpetual injunction,

during pendency of the suit, at the fag-end only to create multifarious litigation, the defendant No.1 has sold the suit schedule property in favour of the proposed party, who is the *transferee pendent-lite* and she has no independent right in the suit schedule property, she cannot be impleaded, she is not at all a necessary party to the present proceedings and prayed for dismissal of the suit.

6. At this stage, it is appropriate to examine the pleadings in the plaint and the written statement filed by defendant No.1, who executed the sale deed in favour of the proposed party on 07.03.2022. The plaintiffs have filed the Original Suit for cancellation of agreement of sale – cum – GPA dated 31.12.2022 against the defendant No.1 and also sought for perpetual injunction. Defendant No.1 has filed a detailed written statement stating that though the plaintiff had handed over the possession to the defendant, subsequently, the plaintiff requested the defendant to allow the plaintiff to be in possession of portion of the suit property on rental basis for a period of one year, as such the defendant has allowed the plaintiff to remain in possession of suit schedule property and the

plaintiffs have agreed to pay a monthly rent of Rs.2,00,000/- to the 1st defendant.

7. It is further pleaded in paragraph Nos.14 and 15 of the written statement that the plaintiffs gained illegally and caused wrongful loss to the defendants and disputed the agreement of sale, as such the defendant has set-up a counter-claim for specific performance of agreement of sale – cum – GPA dated 31.12.2012 alleging that the plaintiffs have entered into loan transaction and that they are liable to pay the rents from December, 2013 to July, 2017 amounting to Rs.88,00,000/- however, he is restricting the claim only for a period of three years for a sum of Rs.72,00,000/-. Accordingly, in the written statement filed by defendant No.1, a counter claim is set-up for directing the plaintiffs to execute a sale deed in favour of the defendants in respect of suit schedule property pursuant to the agreement of sale dated 31.12.2012 document bearing No.25 of 2013 and to deliver possession of the suit schedule property and also for arrears of rent of Rs.72,00,000/-, future rents from

August, 2017 onwards at the rate of Rs.2,00,000/- per month till the date of delivery of possession.

8. Now let me examine the recitals of the sale deed that is filed by the proposed party. It is dated 07.03.2022, executed by defendant No.1 in favour of the proposed party, wherein there is a clear recital that the defendant No.1 is the absolute owner and possessor of the said premises and the possession was also handed over to the proposed party on receipt of the entire sale consideration. This sale deed dated 07.03.2022 was executed almost after five years to defendant No.1 filing the written statement. Having pleaded in the written statement, filed in the year 2017 that they have lost possession in their year 2012 itself, immediately after the agreement of sale and also the defendant No.1 has claimed specific performance of the said agreement of sale dated 31.12.2012 vide registered document bearing No.25 of 2013, recovery of possession, arrears of rent, future rents. Whereas the plaintiffs in the Original Suit have claimed that they are in exclusive possession, the 1st defendant has fraudulently obtained the said agreement of sale -cum- GPA dated 31.12.2012 failed

to pay the balance sale consideration, possession was also not parted by the plaintiffs, as such, they have sought for cancellation of the agreement of sale –cum- GPA document bearing No.25 of 2013, dated 31.12.2012 and also for perpetual injunction.

9. Learned counsel for the revision petitioner strenuously contends that the trial Court has failed to appreciate the settled principles of law and the order impugned is against the spirit and scheme of Order 1, Rule 10 of CPC, relied on the principles laid in the following decisions:

- (1) **Savitri Devi v. District Judge, Gorakhpur and others¹;**
- (2) **Amit Kumar Shaw and another v. Farida Khatoon and another² and**
- (3) **V.Narayana Reddy v. Smt.Ani Narayanan and another³.**

10. There cannot be any dispute about the principles laid in the above decisions, more particularly in **Savitri Devi** (1st referred supra), a Three Judge Bench of Hon'ble Supreme Court, while dealing with the scope of

¹ AIR 1999 Supreme Court 976

² AIR 2005 Supreme Court 2209

³ 2009 AIR (AP) 124

Order 1, Rule 10 CPC, held in paragraph Nos.8 and 9 as under :

“8. The facts set out by us in the earlier paragraphs are sufficient to show that, there is a dispute as to whether the first defendant in the suit was party to the order of injunction made by the Court on 18.0.92. The proceedings for punishing him for contempt are admittedly pending. The plea raised by him that the first respondent had played a fraud not only against him but also on the Court would have to be decided before it can be said that the sales effected by the first defendant were in violation of the order of the Court. The plea raised by respondents 3 to 5 that they were bona fide transferees for value in good faith may have to be decided before it can be held that the sales in their favour created no interest in the property. The aforesaid questions have to be decided by the Court either in the suit or in the application filed by respondents 3 to 5 for impleadment in the suit. If the application for impleadment is thrown out without a decision on the aforesaid questions respondents 3 to 5 will certainly come up with a separate suit to enforce their alleged rights which means multiplicity of proceedings. In such circumstances, it cannot be said that respondents 3 to 5 are neither necessary nor proper parties to the suit.

9. Order I, Rule 10 C.P.C. enables the Court to add any person as party at any stage of the proceedings if the person whose presence before the Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision in the Code”.

11. In **Amit Kumar Shaw and another** (2nd cited supra) the Hon’ble Apex court held that to save the honest and bonafide purchasers it is essential to implead the *pendent-lite* purchaser. Similar principle is laid in **V.Narayana Reddy** (3rd cited supra).

12. Be it stated that the facts of the case on hand are quite distinguishable. As stated supra, the plaintiff has filed the suit for cancellation of said agreement of sale – cum- GPA document bearing No.25 of 2013 dated 31.12.2012, the suit was filed on 31.08.2016, the defendants have filed written statement on 04.08.2017 by setting up a counter-claim for specific performance of the said agreement of sale –cum-GPA dated 31.12.2012 in respect of suit schedule property, he is also claiming recovery of possession of suit schedule property and

arrears of rent of Rs.72,00,000/- from August, 2013 to July, 2017 and future rents at the rate of Rs.2,00,000/- from August, 2017 onwards till the date of delivery of possession.

13. Conspicuously it is mentioned in the sale deed dated 07.03.2022 that the defendant No.1 is the absolute owner and possessor and delivered the vacant possession of the same in favour of the proposed party, which is far from truth and against the pleadings of the 1st defendant in their written statement and the counter claim set up by the 1st defendant. Further, the said sale deed is executed almost after five years of defendant filing the written statement on 04.08.2017 and after more than six years of plaintiff filing the suit. In these circumstances the very averments of the sale deed that the possession was delivered to defendant/proposed party and payment of huge consideration of Rs.4,25,00,000/- appears to be far from the truth, it appears to be a chance litigation, the defendant No.1, who is conscious about the pending suit since 2016 for cancellation of the very same registered agreement of sale -cum- GPA, has executed the said sale

deed in favour of the proposed party in order to create multiple litigations.

14. The learned counsel for respondents/plaintiffs relied on the principles laid in **Sudhamayee Pattnaik and others v. Bibhu Prasad Sahoo and others**⁴ wherein on identical facts the Apex Court in paragraph Nos.11 and 13 held as under :

“11. At the outset, it is required to be noted that the defendants in the suit filed application under Order 1 Rule 10 CPC and prayed to implead the subsequent purchasers as party defendants. The suit is for declaration, permanent injunction and recovery of possession. As per the settled position of law, the plaintiffs are the domus litis. Unless the court suo motu directs to join any other person not party to the suit for effective decree and/or for proper adjudication as per Order 1 Rule 10 CPC, nobody can be permitted to be impleaded as defendants against the wish of the plaintiffs. Not impleading any other person as defendants against the wish of the plaintiffs shall be at the risk of the plaintiffs. Therefore, subsequent purchasers could not have been impleaded as party defendants in the application submitted by the original defendants, that too against the wish of the plaintiffs.

⁴ 2022 SCC OnLine 1234

13. However, at the same time, considering the fact that defendants have also filed counter-claim for declaration of their right, title and interest over the suit property and permanent injunction and in case the counter-claim is allowed, as the plaintiffs are opposing to implead the subsequent purchasers as party defendants, thereafter it will not be open for the plaintiffs to contend that no decree in the counter-claim be passed in absence of the subsequent purchasers. Therefore, non-impleading the subsequent purchasers as defendants on the objection raised by the plaintiffs shall be at the risk of the plaintiffs”.

15. In the present suit also the plaintiffs have filed the suit for cancellation of the said agreement of sale-cum-GPA dated 31.12.2012. The defendants have set-up a counter-claim for specific performance of the said agreement of sale-cum-GPA and also for recovery of possession, having pleaded so in their written statement, the defendant No.1 has executed the sale deed dated 07.03.2022 with clear recitals of delivery of possession, which is far from the truth. As per the settled position of law, the plaintiffs being the *dominus-litis* cannot be forced to contest the litigation against their wish. Further, not

impleading any other person as the defendants against the wish of the plaintiffs shall be only at the risk of the plaintiffs. Therefore, as held by the Apex Court in the above decision, the subsequent purchasers need not be impleaded as parties to the defendants in the application submitted by the proposed party, that too against the wish of the plaintiffs. Therefore, non-impleading the subsequent purchasers as defendants on the objections raised by the plaintiffs shall be only at the risk of the plaintiffs. In that view of the matter and for the reasons stated above, I do not find any merit in the contentions raised by the revision petitioner/third party for her impleadment as defendant in the Original Suit and in the written statement filed by the existing defendant.

16. Accordingly, viewed from any angle, the proposed party cannot be treated as a bonafide purchaser for the reason that the defendant No.1 has claimed in his written statement filed on 04.08.2017 for recovery of possession of suit schedule property, whereas, in the registered sale deed dated 07.03.2022 it is mentioned that as absolute owner the defendant No.1 has delivered the

possession of the suit schedule property, in favour of proposed party, which is far from the truth and that the proposed party without taking possession of suit schedule property appears to have parted the sale consideration as mentioned in the sale deed now approached the trial Court with a prayer for impleadment as defendant No.2 claiming to be the absolute owner and possessor which is not only far from the truth but also against the pleadings and against the claim made by the defendant No.1 in their written statement.

17. In that view of the matter the proposed party being a subsequent purchaser cannot be impleaded as defendant No.2 in the Original Suit against the wish of plaintiff. The impugned order passed by the trial Court does not warrant any interference by this Court and it does not suffer from any infirmities or irregularities.

18. In the result, the Civil Revision Petition is dismissed confirming the impugned orders dated 16.09.2022 in I.A.No.650 of 2022 in O.S.No.111 of 2016 on

the file of the learned XXVII Additional Chief Judge, City Civil Court, Secunderabad.

However, in the circumstances of the case, there shall be no order as to the costs. Miscellaneous applications, if any pending, shall stands closed.

Sd/- MOHD. SANAULLAH ANSARI
ASSISTANT REGISTRAR

//TRUE COPY//


SECTION OFFICER

To,

1. The XXVII Addl. Chief Judge, City Civil Court, at Secunderabad
2. One CC to SRI. T. KRISHNA KUMAR, Advocate [OPUC]
3. One CC to SRI. ZEESHAN ADNAN MAHMOOD, Advocate [OPUC]
4. One CC to Sri MANU, Advocate [OPUC]
5. Two CD Copies

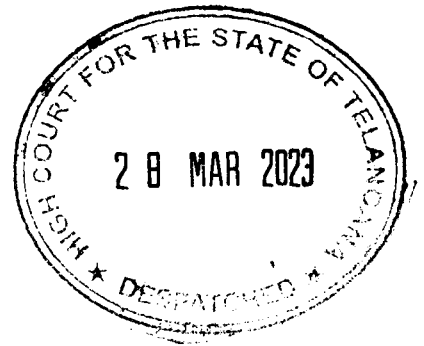
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HIGH COURT

AVR,J

DATED:20/02/2023



ORDER

CRP.No.2611 of 2022

DISMISSING THE
CIVIL REVISION PETITION

⑦ VW
27/3/23