

(2010) 04 AP CK 0044

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 6201 of 2009

Basant Kumar Soni

APPELLANT

Vs

Mukund Das Soni, Hanumanula Venkateshwar Rao and
Hanumanula Rajya Lakshmi Rao

RESPONDENT

Date of Decision : 07-04-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2), 151
Constitution of India, 1950 — Article 227
Specific Relief Act, 1963 — Section 19

Citation : (2010) 4 ALT 790

Hon'ble Judges : K.C. Bhanu, J

Bench : Single Bench

Advocate : M. Satish Kumar, for the Appellant; Thakur Singh, for the Respondent

Final Decision : Allowed

Judgement

K.C. Bhanu, J.—This revision under Article 227 of the Constitution of India is directed against the order, dated 01-12-2009, in I.A. No. 1550 of 2009 in O.S. No. 58 of 2009, on the file of the Principal District Judge, Medak at Sangareddy, whereunder and whereby the application filed under Order I Rule 10(2) r/w Section 151 of the Code of Civil Procedure, 1908 (for short "CPC") to implead the petitioner herein as defendant No. 3 in the main suit O.S. No. 58 of 2009, was dismissed.

2. Brief facts, that are necessary for disposal of the present revision petition may be stated as follows:

The petitioner herein filed a suit in O.S. No. 47 of 2009 on the file of the Principal District Judge, Medak at Sangareddy for specific performance against the respondents 2 and 3 herein who are being represented by their General Power of Attorney holder Satyanarayana Soni, in respect of 14 flats in third floor bearing Nos. 302, 303, 306 to 308, 310 to 314 and 316 to 319 and Shop No. 4 and 10 out of the apartment Chandra Towers in Sy. No. 313 Part, Rajampet, Sangareddy,

Medak District. It is further averred in the petition that the defendants therein having received summons, failed to appear before the Court and the case was posted to 28-08-2009 for ex parte evidence. On coming to know about filing of the suit by the petitioner in O.S. No. 47 of 2009 the GPA holder of respondents 2 and 3 is trying to avoid the execution of contract and therefore, he colluded with the respondent No. 1 who in turn, filed the above suit O.S. No. 58 of 2009 for specific performance of agreement of sale in respect of the suit schedule property, which is one and the same of the schedule property as mentioned in O.S. No. 47 of 2009. The respondents 2 and 3 and their GPA holder are trying to resile from the contract entered with him after having received the entire amount towards sale consideration. With such oblique motive and ill intention, respondents 2 and 3 and their GPA holder have set up the respondent No. 1 by creating all false and concocted documents. He has got substantial interest in the suit schedule property covered under both the suits, which are one and the same. The issues, witnesses and the documents are also similar. In order to avoid multiplicity of proceedings and for bringing out true facts before the Court, he may be impleaded as party in O.S. No. 58 of 2009.

3. The 1st respondent-plaintiff filed counter stating that the petition is not maintainable in the eye of law. He denied about the petitioner filing suit in O.S. No. 47 of 2009 on the file of the Principal District Judge, Medak at Sangareddy for specific performance of agreement of sale against the respondents 2 and 3 and their GPA holder in respect of the suit schedule property. The petitioner did not file any documentary evidence in respect of the said allegations. As the defendants in the suit did not appear, they were rightly set ex parte and the matter was posted for evidence. Accordingly, he filed his affidavit evidence. Since the trial has already been commenced, the present petition to implead the petitioner as party does not arise. Being unconcerned person to the above suit, the petitioner has got no locus standi to raise any objection against the 1st respondent. Since the petitioner is no way concerned with the suit schedule property in any manner, he is not entitled to raise any claim or adverse rights against the respondents or their vendor. The allegation that the respondents and their vendor have colluded to defeat the rights of the petitioner is denied. Therefore, he prays to dismiss the petition.

4. The trial Court after considering the material on record, dismissed the application on the ground that the petitioner was a third party to the agreement and therefore, he cannot be impleaded as party in the suit as he already filed a suit in O.S. No. 47 of 2009 against the respondents 2 and 3 and their GPA holder. Challenging the same, the present revision is filed.

5. Learned Counsel appearing for the petitioner herein contended that both the suits are filed basing on the agreement of sale in respect of the same property and therefore, by impleading the petitioner in the other suit would not cause any prejudice to the 1st respondent, that if the suit filed by the 1st respondent against the respondents 2 and 3 is permitted to be proceeded with, in the

absence of the petitioner, the rights of the petitioner would be jeopardized, that in order to avoid conflict of decisions considering the fact that the agreement holders in both the suits are seeking to enforce their respective contracts in respect of the same property, the petitioner is proper and necessary party to be added as defendant No. 3 in O.S. No. 58 of 2009 and hence, he prays to allow the revision.

6. On the other hand, learned Counsel appearing for the 1st respondent contended that the impugned order is not shown to be perverse or contrary to law in as much as the liberty was given to the petitioner to club both the suits so that common evidence can be let in and hence, he prays to dismiss the revision.

7. The petitioner herein filed suit in O.S. No. 47 of 2009 basing on an agreement of sale, dated 19-12-2008 which was executed by the respondents 2 and 3 herein represented by their GPA holder Satyanarayana Soni in respect of 14 flats in third floor bearing Nos. 302, 303, 306 to 308, 310 to 314 and 316 to 319 and Shop No. 4 and 10 out of the apartment Chandra Towers in Sy. No. 313 Part, Rajampet, Sangareddy, Medak District. Whereas the 1st respondent herein (Mukund Das Soni) filed suit O.S. No. 58 of 2009 against the respondents 2 and 3 herein and their GPA holder basing on the agreement of sale, dated 14-02-2008 in respect of 14 flats in third floor and shop Nos. 4 and 10 in ground floor of Chandra Towers, situated at Ward No. 3, Block No. 5, Rajampet, Sangareddy town, Medak District. A categorical finding has been recorded by the trial Court that the suit schedule property in O.S. No. 47 of 2009 and in O.S. No. 58 of 2009 on the file of the Principal District Judge, Medak at Sangareddy is one and the same and the parties in both the suits is one and the same. The petitioner herein wanted to come on record as 3rd defendant in the suit filed by the 1st respondent herein against the respondents 2 and 3 who are the defendants in that suit.

8. In the light of the above controversy, it is necessary to consider the relevant aspects of CPC under which the Court is empowered to add a party in the suit. Order I Rule 10(2) CPC reads thus:

The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

Therefore, the above provision can be invoked by the defendant or plaintiff as the case may be, in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. Therefore, two requirements are to be satisfied for determining the question as to whether who is a necessary party viz.,(I) There must be a right to some relief against such

party in respect of controversy involved in the proceedings and (2) No effective decree can be passed in the absence of such party. Section 19 of the Specific Relief Act, 1963 is exhaustive on the question as to who are the parties against whom the contract of specific performance can be enforced. For deciding the question whether who is a proper party in the suit for specific performance, the guiding principle is that presence of such party is necessary to adjudicate upon the controversy involved in the suit for specific performance of the contract of sale.

9. Learned Counsel for the petitioner relied on a decision reported in *Kasturi Vs. Iyyamperumal and Others*, wherein it was held thus (para 13):

From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the court would be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person

10. He also relied on a decision reported in *Sumtibai and Others Vs. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.) Thru Smt. Mankanwar Chordia (Dead) and Others*, where in explaining the decision reported in *Mohd. Ibrahim and Others Vs. Smt. Munni @ Zainab Bee*, it was held thus (para 14):

In view of the aforesaid decisions, we are of the opinion that *Kasturi* case is clearly distinguishable. In our opinion it cannot be laid down as an absolute proposition that whenever suit for specific performance is filed by A against B, a third party C can never be impleaded in that suit. In our opinion, if C can show a fair semblance of title or interest he can certainly file an application for impleadment. To take a contrary view would lead to multiplicity of proceedings because then C will have to wait until a decree is passed against B, and then file a suit for cancellation of the decree on the ground that A had no title in the property in dispute. Clearly, such a view cannot be countenanced.

From the above decisions, it is clear that when a party shows a fair semblance of title or interest, he can be impleaded

11. He also relied on a decision reported in *Savitri Devi Vs. District Judge, Gorakhpur and Others*, wherein it was held thus (para 11):

In *Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others*, this Court discussed the matter at length and held that though the plaintiff is a "dominus lit is" and not bound to sue every possible adverse claimant in the same suit, the Court may at any stage of the suit direct addition of parties and generally it is a matter of judicial discretion which is to be exercised in view of the facts and circumstances of a particular case. The Court said (para 8 of AIR):

"The case really turns on the true construction of the rule in particular the meaning of the words whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit." The Court is empowered to join a person whose presence is necessary for the prescribed purpose and cannot under the rule direct the addition of a person whose presence is not necessary for that purpose. If the intervener has a cause of action against the plaintiff relating to the subject matter of the existing action, the Court has power to join the intervener so as to give effect to the primary object of the order which is to avoid multiplicity of actions.

The Court also observed that though prevention of actions cannot be said to be main object of the rule, it is a desirable consequence of the rule. The test for impleading parties prescribed in *Razia Begum Vs. Sahebzadi Anwar Begum and Others*, that the person concerned must be having a direct interest in the action was reiterated by the Bench.

12. Therefore, from the above decisions, it is clear that the proposed party must show some semblance of right and interest in the subject matter or a direct interest in the subject matter of the suit. The primary object of Order I Rule 10(2) CPC is to bring before the Court at one and the same time all the persons interested in the dispute so that all the controversies in the suit may be finally determined once for all in the presence of all parties without delay, inconvenience and expenses of the several actions, trials and inconclusive adjudication. The petitioner is not a necessary party in O.S. No. 58 of 2009 on the file of the Principal District Judge, Medak at Sangareddy, as no relief to be granted, but for the reason that the property covered by contract of sale entered between the 1st respondent herein on one hand and the respondents 2 and 3 on the other and the 2nd agreement of sale dated 14-02-2008 entered between parties therein is one and the same. Even though no relief can be granted against the petitioner, who is not a party to the suit, but his presence is necessary for complete and final decision of the question involved in the suit in as much as the petitioner and the 1st respondent are seeking enforcement of their respective agreements of sale said to have been executed by the respondents 2 and 3 herein on two different dates in respect of the same property. Therefore, the presence of the petitioner may be helpful in effectually adjudicating upon all the points in dispute. It is therefore, the duty of the Court to keep in mind a relevant consideration and as far as possible, multiplicity of proceedings should be avoided. Further, if the two suits are tried separately, there is a possibility of conflict of decisions. To be joined as a party to the suit, the person must have a direct or legal interest in the action. In other words, he must show that the litigation may lead to a result, which would affect him legally by interfering or adversely affecting his legal rights or legally protected interest. In view of the fact that subject matter in dispute is one and the same in both the suits and two persons are claiming to enforce two agreements of sale, if the proposed party is not to be impleaded, there would be conflict of decisions. No

doubt, the trial Court observed that petitioner may file a petition for trial of both the suits, which would serve the purpose, but at the same time there would be no pleading insofar as the present petitioner is concerned in respect of O.S. No. 58 of 2009. There cannot be any dispute that without there being any pleading, any amount of evidence is valueless. If the petitioner is allowed to come on record, he can file written statement so as to safeguard his interest in relation to the property in dispute. Therefore, the presence of the petitioner is very much essential and necessary as his interest in the property relating to the suit would affect adversely in his absence. This aspect of the case has been overlooked by the trial Court. Therefore, the impugned order is liable to be set aside.

13. Accordingly, the Civil Revision Petition is allowed setting aside the order, dated 01-12-2009, in I.A. No. 1550 of 2009 in O.S. No. 58 of 2009, on the file of the Principal District Judge, Medak at Sangareddy and consequently, the application filed by the petitioner herein to implead him as 3rd defendant in the suit is allowed. There shall be no order as to costs.