
(2008) 06 AP CK 0088
In the Andhra Pradesh High Court
Case No : CRP No. 5921 of 2007

Katta Venkateswara Rao

APPELLANT

Vs

Ch. Leelavathi (died) and Others

RESPONDENT

Date of Decision : 17-06-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 22 Rule 10, 146

Citation : (2008) 5 ALD 320 : (2008) 6 ALT 323

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Y.V. Ravi Prasad, for the Appellant;

Final Decision : Allowed

Judgement

P.S. Narayana, J.—Heard Sri Y.V. Ravi Prasad, learned Counsel for the petitioner.

2. Sri Y.V. Ravi Prasad states that respondents 2 to 5 had been served and proof of service also had been filed. But, none represents the respondents. The learned Counsel placed strong reliance on the decision of the Apex Court in Amit Kumar Shaw and Another Vs. Farida Khatoon and Another, and would maintain that an alienee pendente lite also can be brought on record. The Counsel also would maintain that since the petitioner/ alienee pendente lite is the purchaser from the legal representatives of the original plaintiff and since the parties having parted with the property may not be interested in further prosecuting the litigation, to safeguard his interest, such party to be added as a party to further prosecute the appeal. The learned Counsel also would maintain that here is a case where no counter had been filed and the application had not been opposed even before the learned Senior Civil Judge, Tadepalligudem. But however, the learned Judge after recording certain reasons observed that after a lapse of about 9 months of the purchase, the application had been filed and also after observing that the same is a suit for injunction simplicitor and hence there is no need of allowing the application, ultimately dismissed the said application. The Counsel would maintain that this approach adopted by the learned Senior Civil

Judge, Tadepalligudem is not just and proper and in the facts and circumstances of the case, the application to be allowed and the petitioner to be permitted to come on record.

3. The civil revision petition is filed by the proposed third party who filed the application IA No. 1 175/2006 in AS No. 14/ 2002 on the file of Senior Civil Judge, Tadepalligudem. The application was filed by the revision petitioner under Order I Rule 10 of the CPC to add him as 4th appellant in the appeal, being the subsequent purchaser of the plaint schedule property. The said application was dismissed. Hence the present civil revision petition had been preferred.

4. It is stated that the revision petitioner/third party purchased the plaint schedule property from the children and grand-children of the appellant under a registered sale deed dated 8.12.2005 for Rs. 1,25,000/- and he came to know that the original owner of the plaint schedule property filed OS No. 171/95 for permanent injunction and the same was dismissed and appeal AS No. 14/2002 had been preferred as against the said Decree and Judgment. It is also stated that since the proposed party/petitioner acquired right over the plaint schedule property as it was purchased by him, he would be a proper and necessary party to the appeal especially to protect his interest. The respondents reported no counter. The learned Judge having framed the Point for consideration at Para 5 recorded certain reasons at Para 6 and, ultimately dismissed the application. The twin reasons which had been recorded by the learned Senior Civil Judge are as hereunder:-(1) The application had been moved after a lapse of about 9 months after the purchase and (2) the Suit itself being a suit for perpetual injunction simplicitor there is no need to allow the application filed under Order I Rule 10 of the Code of Civil Procedure. It is no doubt true that in a suit for perpetual injunction, the limited question to be decided is the factum of possession on the date of the institution of the suit. However, in the facts and circumstances of the case, when the suit for perpetual injunction was dismissed and the same was carried by way of appeal, the revision petitioner/purchaser would be definitely interested in further prosecuting the appeal since the other appellants who are on record, the legal representatives of the 1st appellant, may not be much interested in further prosecuting the appeal having parted with the property. Though the suit for perpetual injunction is a personal action, since incidentally the question of title may also have to be gone into whenever a suit for perpetual injunction is filed in relation to immovable property, a person having direct interest in such immovable property cannot be said to be an unnecessary party to the litigation. Further, elaborate reasons need not be recorded in this regard for the reason that the respondents had not chosen to file any counter to oppose the said application. Apart from this aspect of the matter, the Apex Court expressed an opinion that the alienee pendente lite also may be brought on record in the light of Order XXII Rule 10, Order I Rule 10 and Section 146 of the CPC as held in the decision referred Amit Kumar Shaw and Anr. v. Farida Khatoon and Anr. (supra). In the facts and circumstances of the case, the impugned order is hereby set aside and the civil revision petition is hereby allowed. No order as

to costs.