
(2010) 02 AP CK 0028
In the Andhra Pradesh High Court
Case No : C.R.P. No. 4543 of 2009

Lekkala China Masthan Naidu and Others	APPELLANT
Vs	
Meda Sarvani and Another	RESPONDENT

Date of Decision : 17-02-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2), 151
Constitution of India, 1950 — Article 227

Citation : (2010) 2 ALD 725 : (2010) 3 ALT 109

Hon'ble Judges : C.V. Ramulu, J

Bench : Single Bench

Advocate : M. Venkata Narayana, for the Appellant; P. Ganga Rami Reddy, for the Respondent

Final Decision : Dismissed

Judgement

C.V. Ramulu, J.—This Civil Revision Petition under Article 227 of the Constitution of India is filed, questioning the order dated 31-7-2009 made in I.A. No. 119 of 2009 in O.S. No. 234 of 2008, on the file of the learned Senior Civil Judge, Gudur, Nellore district, whereunder the application filed under Order I Rule 10(2) read with Section 151 of Civil Procedure Code, seeking to add the first respondent as party defendant to the suit, was allowed.

2. Petitioners are plaintiffs and second respondent is defendant in the suit O.S. No. 234 of 2008. First respondent is third party to the suit. Petitioners laid the above suit for specific performance of Agreement of Sale dated 2-8-1989 purported to have been executed by second respondent. The said suit is pending and during the pendency of suit, first respondent filed the present LA. under Order 1 Rule 10(2) of CPC to add her as defendant to the suit. Petitioners resisted the same. After a detailed consideration of the arguments on both sides and other material made available on record, the Court below, by impugned order allowed the application as prayed for. Aggrieved by the same, the present C.R.P. is filed.

3. It is the contention of the first respondent that she is the absolute owner of the suit schedule properties, which originally belonged to Guntamadugu Subba Raju s/o Venkata Raju and his sons and she purchased the same under a registered sale deed dated 20-9-2008 and took possession of the same. Ever since the date of purchase, she has been in continuous possession and enjoyment of the suit schedule properties. The petitioners and second respondent are no way concerned with the suit schedule properties. It is further stated that previously petitioners 2 and 3 filed a suit against her husband; Guntamadugu Subba Raju and others for permanent injunction in O.S. No. 69 of 2002 on the file of the learned Junior Civil Judge, Kota, which is still pending. According to first respondent, when the said suit is pending, petitioners again filed the present suit for specific performance against respondent No. 2, who is unconnected to the proceedings and got himself set ex parte only to divert the circumstances. This fact came to the knowledge of the first respondent recently. Further, on 16-10-2008 second respondent executed a consent letter in favour of vendor of first respondent relinquishing his right.

4. Petitioners filed a detailed counter in the said LA. denying the allegations made by the first respondent and stated that they filed suit for specific performance of agreement of sale dated 2-8-1989 executed by Muppalla Narasa Raju, who is the elder brother of second respondent in favour of Lekkala Venkata Subamma, who is the wife of first petitioner and mother of petitioners 2 and 3. It is further stated that Order I Rule 10(2) of CPC does not permit to add first respondent as party defendant to the suit and such petition is not maintainable. Further, the Apex Court has categorically held that in a suit for specific performance, third party/stranger claiming independent title and possession is neither necessary nor proper party and therefore, not entitled to add as party to the suit.

5. I have given my earnest consideration to the respective submissions made by the learned Counsel on either side and perused the impugned order and other material made available on record.

6. Admittedly, I.A. No. 119 of 2009 was filed by a third party to the suit (first respondent) under Order I Rule 10(2) of CPC to come on record as defendant in the suit. In this context, it may be first necessary to notice Order I Rule 10(2), which reads as under:

This 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.

According to the first respondent, she is the absolute owner of plaint schedule

properties, which originally belonged to Guntamadugu Subba Raju s/o Venkata Raju and his sons. She purchased the same, under a registered sale deed, dated 20-9-2008, and took possession of the same. Ever since the date of purchase, she has been in continuous and uninterrupted possession of the suit schedule properties and petitioners and second respondent are no way concerned with the suit schedule properties. Petitioners 2 and 3 filed a suit against the husband of first respondent and others for permanent injunction in O.S. No. 69 of 2002 on the file of the learned Junior Civil Judge, Kota and the same is still pending. This fact was not revealed in the present suit. Petitioners again filed the present suit for specific performance against respondent No. 2, who is unconnected to the suit land. According to the first respondent, the present suit O.S. No. 234 of 2008 is a collusive suit, which was filed only to defeat her rights and to create third party interest, therefore, she filed the present I.A. No. 119 of 2009 to come on record as party defendant in the suit and to protect her interest.

7. The fact as to pendency of suit in O.S. No. 69 of 2002 on the file of the learned Junior Civil Judge, Kota is not denied specifically. Therefore, from the facts, it is clear that the petitioners are trying to create some third party interest and in the teeth of registered sale deed executed in favour of first respondent/it cannot be said that the first respondent is neither interested nor necessary party to the proceedings. Therefore, I am of the considered opinion that the first respondent is very much interested and proper party to come on record to protect her interest, otherwise, if really the suit in O.S. No. 234 of 2008 is a collusive suit, it will definitely harm her interest and would lead to complications.

8. Now the question is as to whether in a suit for specific performance, third parties need not be brought on record and they are not necessary parties for the purpose of deciding the issues involved therein.

9. In this context, it may be relevant to notice that while answering this question, this Court in *Bala Narasimha and Others Vs. Gangaputra Co-operative Housing Society and Others*, held as under:

In a suit for specific performance of the agreement to sell, even though no consequential relief of possession or injunction is claimed, the persons claiming under earlier agreements of sale in their favour and in possession of the suit property, should be impleaded as necessary and proper parties to the suit under Order 1, Rule 10(2). This is so because, even in cases where specific performance alone is asked for it may be relevant to go into the question as to whether one of the parties is in possession for the purpose of deciding the truth of the agreement or the question as to whether one of the parties was ready and willing to perform the contract. Even if such considerations do not arise in a simple suit for specific performance, there is no doubt that the party who is successful in getting a sale deed from the vendor pursuant to the decree will not keep the decree without using it for the purpose of seeking possession ultimately. As and when the successful vendee seeks to obtain possession, the dispute between persons already in possession pursuant to an earlier agreement

or a latter agreement has necessarily to be gone into once again. Therefore, instead of permitting the dispute relating to the possession of the property to be kept in suspended animation, the impleading of the party holding or claiming to hold under a prior or latter agreement would certainly avoid multiplicity of suits.

10. In the facts and circumstances of the case on hand, as noticed above, and being fortified by the above judgment, I am of the view that the Court below has not committed any error in ordering the I.A. filed under Order I Rule 10(2) of CPC for impleading the first respondent as party defendant to the suit, though it is a suit for specific performance. In fact, by doing so, the Court has prima facie avoided two contingencies, one is, a collusive suit and the other is doing illegal things by legal means. Further, all the issues between the parties will be decided safely and would also avoid multiplicity of suits. Therefore, I am of the opinion that the impugned order dated 31-7-2009 made in I.A. No. 119 of 2009 in O.S. No. 234 of 2008 on the file of the learned Senior Civil Judge, Gudur, Nellore district does not call for any interference by this Court under Article 227 of the Constitution of India. The C.R.P. is devoid of merit and liable to be dismissed.

11. Accordingly, the C.R.P. is dismissed. No order as to costs.