
(2010) 04 AP CK 0014

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No's. 3852 and 5254 of 2009

Potti Rajeshwari and Another

APPELLANT

Vs

Quader Mohiuddin and Another

RESPONDENT

Date of Decision : 12-04-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2), 151
Constitution of India, 1950 — Article 227
Registration Act, 1908 — Section 47
Transfer of Property Act, 1882 — Section 106

Citation : (2011) 1 ALT 827

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

Bench : Single Bench

Advocate : Vijay Kumar Heror, in CRP No. 3852 of 2009 and Shared Sanghi, in CRP 5254 of 2009, for the Appellant; Shared Sanghi, in CRP No. 3852 of 2009 and for the Petitioner in CRP 5254 of 2009 and Mohammed Ilyas, in CRP No. 5254 of 2009 and Vijay Kumar Heror, for Respondent Nos. 1 and 2 in CRP No. 5254 of 2009, for the Appearing Parties

Final Decision : Dismissed

Judgement

K.C. Bhanu, J.—These revisions are filed under Article 227 of the Constitution of India challenging the order, dated 26-06-2009, in I.A. No. 740 of 2008 in O.S. No. 3840 of 2004, on the file of the 1st Senior Civil Judge, City Civil Court, Hyderabad, where under and whereby the application filed under Order I Rule 10 r/w Section 151 Code of CPC was allowed and the proposed party was added as 2nd Defendant instead of 3rd Plaintiff in the suit.

2. Heard both the counsel.

3. The proposed party filed the above application under Order I Rule 10 r/w Section 151 Code of CPC to implead him as 3rd Plaintiff in the suit stating that the Plaintiffs sold a portion of premises No. 16-7-737, Kattal Guda, near Kamal Talkies, Hyderabad, admeasuring 885 sq. yards under a registered sale deed,

dated 25-03-1994 and possession was delivered to him with all easementary rights including right to collect rents and evict the tenants. That petition was partly allowed impleading the proposed party as 2nd Defendant instead of 3rd Plaintiff in the suit. Aggrieved by the order, Plaintiffs filed CRP No. 3852 of 2009, whereas proposed party filed CRP No. 5254 of 2009.

4. Order I Rule 10(2) Code of 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.

5. On this aspect, it is pertinent to refer to a decision reported in Kesari Goutham Reddy Vs. Velpula John Victor Macaulay and Another, wherein explaining the decision reported in Kasturi Vs. Iyyamperumal and Others, 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.

6. learned Counsel appearing for the Petitioners-Plaintiffs relied on a decision reported in J.J. Lal Pvt. Ltd. and Others Vs. M.R. Murali and Another, wherein it was held thus:

Both the sets of applications raise such controversies as are beyond the scope of these proceedings. This is a simple landlord-tenant suit. The relationship of Municipal Corporation with the Respondents and their mutual rights and obligations are not germane to the present proceedings. Similarly, the question of title between Hemlata Mohan and the Respondents cannot be decided in these proceedings.

7. He also relied on a decision reported in Gudula Sitaratnam Vs. Andhavarapu Govinda Rajulu and others, wherein it was held thus:

It may be mentioned here that the suit was for eviction of a tenant. It is stated by the learned Counsel for the Respondents that in fact, the Defendants-tenants have not disputed the title of the Plaintiffs in the suit. At any rate, in a suit for eviction filed by the owner against his tenant, the question that would rise for

consideration would be whether the Defendant is a tenant or not and whether the tenancy was properly terminated and whether he is liable to be evicted or not. The question of examining Petitioner's title based on agreement of sale would scarcely arise in such a suit. If the Petitioner has some rights based on agreement of sale in his favour, it is open to him to vindicate his rights by way of a separate suit. His presence in the suit would in no way assist the Court in determining the questions involved in the suit. By no stretch of imagination, the Petitioner, on the facts of the case, can be considered either as a necessary or even a proper party to the suit. In fact, it is brought to the notice of this Court that subsequently the Petitioner herein has already filed a separate suit for specific performance in O.S. No. 273 of 1998 on the file of the Junior Civil Judge, Srikakulam.

8. He also relied on a decision reported in Vanjarapu Appallaswaminaidu and Ors. v. Girijana Padmavathi and Anr. (5) 2003 (2) An.W.R. 63 (AP), wherein it was held thus:

In the instant case, the title of the Petitioners is based on an unregistered partition deed. In view of the decision in Gudula Sitaratnam v. Andhivarapu Govindarajulu and others cited by the learned Counsel for the first Respondent-Plaintiff, the Petitioners cannot be impleaded as necessary and proper parties in the suit filed by the first Respondent-Plaintiff for ejectment of the second Respondent-Defendant and recovery of rents as long as their title is not established in separate suit. It is always open to the Petitioners to file a separate suit to establish their right, title and possession either for partition of the so called joint family properties or for enforcement of the unregistered partition, which is a different cause of action. I do not find any illegality or irregularity in the order under this Revision Petition.

9. On the other hand, learned Counsel appearing for the implead Petitioner relied upon a decision reported in Khaja Abdul Khader Vs. Mahabub Saheb and Others, wherein it was held thus.

The Court has to determine the question of title of the Plaintiffs. In order to decide the question relating to the ownership of the land, the 1st Respondent, who is sought to be impleaded in the suit as a Defendant and who claims to be the owner of the land in question must be considered to be a necessary and proper party without whose presence the question cannot be finally and effectually adjudicated upon.

The proposed party claims to have purchased the property under a registered sale deed from the Plaintiffs under a document executed on 25-03-1994. But, however, the said document was registered in the Registrar's office on 13-05-2008 i.e., nearly after fourteen years. On this aspect, learned Counsel for the implead Petitioner relied on a decision reported in Krishna Ceramics and Refractories Vs. Dr. V.S. Krishna Ceramics and Potteries, wherein it was held thus:

... thereby meaning that the title to the property would not pass to the vendees

and that once the registration of the document is complete, as stated above, Section 47 steps in and the title of a person under completed registered document relates back to the time from which it would have operated if no registration thereof had been required or made.

10. He also relied upon a decision reported in Somagani Venkata Subbamma Vs. District Panchayat Officer and Another, wherein it was held thus:

In the aforementioned situation, the effect as regards application of Section 47 of the Registration Act requires consideration. The said provision reads as under:

47. Time from which registered document operates: A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration

In terms of the aforementioned provision, therefore, if a deed of sale is executed although not registered, the right, title and interest in respect thereof shall pass with retrospective effect i.e., from the date of execution thereof.

In view of the above decisions, it is clear that though the document is registered at subsequent time, but it can be said that it relates back to the date of execution. Therefore, from the date of execution of document though it is registered 14 years thereafter, the proposed party can have right, interest and title in the property. He cannot come on record as Plaintiff in the suit. In such a case, quit notice as required u/s 106 of the Transfer of Property Act is mandatory. Such a notice has not been given. Therefore, the trial Court rightly not impleaded him as third Plaintiff in the suit. Now it is to be seen whether he can come on record as 2nd Defendant in the suit so as to protect his interest. When the proposed party has got a fair semblance of right, title and interest in the property, he can be brought on record in view of the fact that he has to protect his interest and collect rents from the tenant in respect of extent of site purchased by him through a registered sale deed. If he is not come on record, the rents have to be paid to the Plaintiffs thereby causing miscarriage of justice. Therefore, to avoid multiplicity of proceedings, he can be brought on record so that his interest can be protected. The trial Court, rightly impleaded him as 2nd Defendant in the suit so that he can raise his interest with regard to the payment of rents is concerned (to the extent of 885 sq. yards said to have been executed by the Plaintiffs). Hence, absolutely there are no grounds to interfere with the order under challenge.

11. Accordingly, both the Civil Revision Petitions are dismissed leaving open the proposed party to avail appropriate remedies in accordance with law. However, it is made clear that no observation or finding is given to the effect that from which date the sale deed would come into effect as it has to be decided basing on the evidence adduced by both parties. No order as to costs.