

**IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI
(Special Original Jurisdiction)**

MONDAY ,THE TWENTY SIXTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FOUR
PRESENT

[3397]

**THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA
KRISHNA RAO**

**I.A. 1 OF 2021
IN
FIRST APPEAL NO: 585 OF 2007**

Appeal against the Decree and Judgment dated 19.9.2007 of
the learned Principal District Judge, Kadapa.

Between:

BALISETTI HARIPRASAD

...Petitioner

AND

PUTTA VENKATESAM (DIED) AND OTHERS

... respondents

This Court made the following:

ORDER: -

The petitioner filed the present application under Order
I Rule X of Code of Civil Procedure to permit him to come on
record as the respondent No.5 in the main appeal as prayed
in the affidavit of the petitioner.

2. The case of the petitioner/proposed respondent No.5 is as follows:

The plaintiff in the main suit is shown as 11th respondent, 1st defendant is shown as 12th respondent, 2nd defendant is shown as 13th respondent, 3rd defendant is shown as 1st respondent, 4th defendant is shown as 2nd respondent in the present application by the petitioner. Another respondent in the main appeal is shown as 14th respondent in the present application. The defendants 1 and 2 entered into an agreement of sale dated 05.12.2002 with the defendants 3 and 4 by agreeing to purchase the land and thereafter, the defendants 1 and 2 entered into an agreement of sale dated 02.07.2004 with the plaintiff by agreeing to sell the suit schedule property in the suit and the Original Suit for specific performance of agreement of sale filed by the plaintiff is decreed by the trial Court by directing the defendants 3 and 4 to execute a registered sale deed in favour of the plaintiff in terms of agreement of sale dated 05.12.2002 entered into by the defendants 3 and 4.

Aggrieved against the said decree and judgment passed by the trial judge, the defendants 3 and 4 filed the instant appeal and during the pendency of the appeal, the appellants 1 and 2 are died and their legal representatives are brought on record as appellants 3 to 10.

3. The petitioner herein entered into an agreement of sale dated 22.09.2011 with the plaintiff and 2 others during the pendency of the appeal and due to delay in finalization of the appeal, the plaintiff herein requested him to pay the entire sale consideration expressing his urgent need of money and he paid entire sale consideration and he has also endorsed the payment of remaining balance sale consideration on the back of agreement of sale dated 22.09.2011. Further the plaintiff in the suit has also issued full payment receipt and he has received the total sale consideration of the suit schedule property. The plaintiff in the suit has filed E.A.505 of 2018 in E.P.No.51 of 2018 in O.S.No.18 of 2005 on the file of the Court of Principal District Judge, Kadapa by mentioning about the said agreement of sale and also filed

I.A.(SR) No.3498 of 2021 in OS.No.18 of 2005 by informing the agreement of sale in favour of the petitioner, but the said application was returned with regard to the maintainability of the said application.

4. The plaintiff did not choose to file any counter. The leaned counsel for plaintiff/ respondent No.11 reported no counter.

5. The defendants 3 and 4 in the suit filed a counter denying the averments of the petition and further contended as under:

I.A.No.1 of 2021 filed by the petitioner has no legs to stand as no title to any property including the suit property can be conveyed under an agreement of sale dated 22.09.2011. However, the alleged agreement of sale set-up by the petitioner is compulsorily registrable under the Registration Act, 1908 and therefore, it cannot be looked into for any purpose including for the purpose of the above I.A view of the bar contained under Section 49 of the

Registration Act. The petitioner knowing well about the pendency of the appeal, purchased the suit property under the alleged agreement of sale dated 22.09.2011 from the plaintiff, who has got nothing to do with the suit property. A perusal of the agreement of sale and the alleged receipt set-up by the petitioner show that the purchase price was paid by way of cash which is prohibited under the law and the petitioner has no capacity to pay any amounts under the alleged agreement of sale set by him in the suit. Having entered into the alleged agreement in the year 2011 the petitioner for the reasons best known to him kept silent for more than one decade and filed the present I.A. to come on record in the above appeal in collusion with the plaintiff in the suit and the respondents are not parties to the agreement between the petitioner and the plaintiff. The plaintiff has no semblance of title over the suit property and the petitioner claiming through him cannot be allowed to come on record in the appeal under the guise of purchase of the suit property, more particularly from a person who is not even the owner or

an agreement holder with these respondents and prayed the Court to dismiss the petition.

6. The respondent No.14 herein by name Patan Khasim Khan, who is one of the respondent in the appeal, filed a counter by denying the averments in the petition and further contended as under:

The petitioner in the I.A. is not a party to the suit agreement and there is no privity of contract between this petitioner and the defendants in the suit. In fact, the suit agreement dated 02.07.2004 between the plaintiff and defendants 1 and 2 itself is unenforceable. The alleged agreement of sale dated 22.09.2011 set-up by the petitioner is compulsorily registrable document under the registration Act, 1908 and therefore, it cannot be looked into for any purpose including for the purpose of the above application. in view of the specific bar contained under Section 49 of the Registration Act. The petitioner alleged to have entered into the agreement of sale dated 22.09.2011 knowing well the pendency of the appeal herein above from three persons

who have nothing to do with the subject property and the allegations in the affidavit filed in support of the above application are all false. The judgment and decree dated 19.09.2007 was subsequently suspended by an interim order in the above appeal and the said order is subsisting and hence, the plaintiff has no manner of right, title or enforceable right pursuant to judgment and decree impugned in the above Appeal Suit and thus without prejudice to above it is humbly submitted that the petitioner herein is not a necessary party to the suit and prayed the Court to dismiss the petition.

7. Heard Sri O.Manohar Reddy, learned senior counsel appearing for the petitioner/proposed respondent No.5, Sri P.V.A.Padmanabham, learned counsel appearing for the respondent No.14 and Sri M.R.K.Chakravarthy, learned counsel for appellants in the main appeal.

8. Now the point for determination is

Whether the petitioner/ respondent No.5 is entitled the relief as prayed in the Interlocutory Application.

Point:

The relief sought by the petitioner is to permit him to come on record as respondent No.5 in the main appeal AS.No.585 of 2007. It is not the case of the petitioner that he is the proper and necessary party to the appeal. The case of the petitioner is that pending appeal, he entered into an agreement of sale dated 22.09.2011 with the plaintiff and 2 others and the plaintiff agreed to sell the same to him. The copy of alleged agreement of sale dated 22.09.2011 is filed by the petitioner. The recitals of agreement of sale goes to show the petitioner entered into an agreement of sale with the plaintiff, P.Gayajuddin and Md.Hussain Ahammad. But the plaintiff alone signed in the alleged agreement. Copy of full payment receipt is also filed by the petitioner. In the said copy of receipt dated 15.07.20219, it was recited that he received Rs.14,00,000/- towards balance sale consideration.

The year is mentioned in the said copy of full payment receipt as “20219”, there was an ambiguity in the year mentioned in the alleged copy of full payment receipt. The date, month and year of alleged full payment is not at all mentioned in the copy of the said alleged receipt in the affidavit of the petitioner. The alleged witnesses and executant/plaintiff also not mentioned the date in the alleged full payment receipt. It was signed by the plaintiff alone, though it was obtained from the plaintiff and 2 other third parties.

9. There was a clear recital in the copy of alleged agreement of sale that the appeal in respect of suit schedule property is pending before this Court, in the said copy of alleged agreement of sale, it was recited, if the plaintiff succeeded in the appeal, the plaintiff will obtain a registered sale deed from the Court, later they will inform to the petitioner. There was another recital in the copy of alleged agreement that if the appeal is allowed by setting aside the judgment passed by the trial Court, the plaintiff will refund the

advance amount to the petitioner herein without any interest, therefore, the alleged recitals of copy of agreement makes it clear that the remedy is always open to the petitioner, if the plaintiff succeeded in the appeal, the plaintiff will obtain a sale deed and he will inform to the petitioner herein, otherwise, if the plaintiff is defeated in the appeal, the remedy is always open to the petitioner that the plaintiff will refund the money to him without any interest. The recitals of copy of alleged agreement of petitioner show that the plaintiff herein is not having right and title in the suit schedule property, on knowing the consequences, the petitioner entered into the alleged agreement of sale with the plaintiff/ respondent No.11 and two third parties, who are not having title in the suit schedule property. Copy of alleged agreement of sale of the petitioner herein and the alleged copy of receipt produced by the petitioner shows that the purchases price was paid by way of cash which is prohibited under law, no transaction for an amount of more than Rs.2,00,000/- can be done by paying a cash. Therefore, the petitioner has to

explain the reasons for paying the said huge amount to the plaintiff and 2 third parties by way of cash. Admittedly, the plaintiff has no semblance of title over the suit property as on today also, therefore, this Court cannot permit the petitioner to come on record in the appeal proceedings under the guise of alleged agreement of sale entered with a person, who is not having title.

10. The material on record reveals that the suit is based on the agreement of sale dated 05.12.2002 said to have been executed by defendants 1 and 2 in favour of defendants 3 and 4 and the defendants 1 and 2 entered into agreement of sale dated 02.07.2004 with the plaintiff by agreeing to sell the suit schedule property. Admittedly, the petitioner is not a party to the alleged suit agreement. The trial Court decreed the suit by directing the defendants 3 and 4 to execute a sale deed in favour of plaintiff within one month. Against which, the present appeal is filed by the defendants 3 and 4 and the same is pending vide A.S.No.585 of 2007. Therefore, the petitioner is not a proper and necessary party to the appeal

proceedings. The law is well settled that a party who is not a party to the suit agreement is not a proper and necessary party to the suit for specific performance of agreement of sale.

11. In a case of **Anil Kumar Singh vs. Shivnath Mishra**¹, the Apex Court held as follows:

The question is whether the person who has got his interest in the property declared by an independent decree but not a party to the agreement of sale, is a necessary and proper party to effectually and completely adjudicate upon and settle all the questions involved in the suit. The question before the court in a suit for the specific performance is whether the vendor had executed the document and whether the conditions prescribed in the provisions of the Specific Relief Act have been complied with for granting the relief of specific performance.

Sub-rule (2) of Rule 10 of Order I provides that the court may either upon or without an application of either party, add any party whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit. Since the respondent is not a party to

¹ (1995) 3 SCC 147

the agreement of sale, it cannot be said that without his presence the dispute as to specific performance cannot be determined. Therefore, he is not a necessary party.

As stated supra, in the case on hand, the nature of the suit is suit for specific performance of agreement of sale, against which, the appeal is pending before this Court. Admittedly, the petitioner is not a party to the suit agreement. Therefore, it cannot be said that without his presence, the dispute as to the specific performance cannot be determined.

12. In a case of ***Sarvinder Singh vs. Dalip Singh and others***², the Apex Court held as follows:

The defendants in the suit were prohibited by operation of Section 52 to deal with the property and could not transfer or otherwise deal with it in any way affecting the rights of the appellant except with the order or authority of the Court. Admittedly, the authority or order of the Court had not been obtained for alienation of those properties. Therefore, the alienation would be hit by the doctrine of its pendens by operation of Section 52. Under these

² (1996) 5 SCC 539

circumstances, the respondents cannot be considered to be either necessary or proper parties to the suit.

“The legal position in this regard is no more *res integra* in view of the decision of the Apex Court (2 supra), in the above said decision, the Apex Court held that the property having been purchased during pendency of the litigation is hit under Section 52 of the Transfer of Property Act. Therefore, purchaser is neither a necessary party nor a proper party and he cannot be permitted to come on record”. Here in the case on hand, it is not the case of the petitioner that he purchased the suit schedule property under a registered sale deed from the plaintiff and 2 others. Admittedly the plaintiff has not obtained any sale deed either from the Court or through the defendants 3 and 4 and the plaintiff is not having valid title.

13. The material on record reveals that the defendants 3 and 4 filed the present appeal, this Court granted interim stay of all further proceedings vide its order in A.S.M.P.2301 of 2007, dated 07.11.2007 against the plaintiff herein, pending

stay order against the plaintiff herein the plaintiff entered into an agreement of sale with the petitioner. The Law is well settled that a beneficiary of a contemporaneous transaction is not a proper and necessary party to the proceedings.

14. It is held by Apex Court in ***Delhi Development Authority vs. Skipper Construction Company Private LTD³***, that the legal consequences of what has been done in breach of or in violation of the order of stay or injunction should be undone and the parties could be put back to the same position as they should immediately prior to such order of stay or injunction to not let the defaulting party enjoy any undue advantage. This Court while relying upon cases decided by various High Courts held as under:

“The contemnor should not be allowed to enjoy or retain the fruits of his contempt”.

15. The learned senior counsel on behalf of petitioner placed a reliance in ***Sharadamma VS Mohammed***

³ (1996)4 SCC 622

Pyrejan⁴, in the said decision, the Apex Court held as follows:

Merely due to the assignment or release of the rights during the pendency of the appeal, the appellant did not in any manner lose the right to continue the appeal. Merely by transfer of the property during the pendency of the suit or the appeal, the plaintiff or appellant, as the case may be, ordinarily has a right to continue the appeal. It is at the option of the assignee to move an application for impleadment.

The afore said case relates to suit for declaration of title and restoration of possession of the suit property based on the registered sale deed in favour of the plaintiff and the trial Court dismissed the said suit. In the case on hand, the case of the petitioner is, his claim is based on alleged unregistered agreement of sale with the plaintiff and 2 others during the pendency of the appeal that too the said decree and judgment passed by the trial Court was stayed by this Court in appeal proceedings. In the case on hand, the plaintiff has not obtained any sale deed either through Court or

⁴ (2016) 1 SCC 730

defendants 3 and 4 who are the original owners of the plaint schedule property. Therefore, the facts in the cited decision are different to the instant case.

16. The learned senior counsel on behalf of petitioner placed another reliance in ***Raj Kumar vs. Sardari Lal and others***⁵, in that decision, the Apex Court held as follows:

The transfer took place during the pendency of the suit but the decree passed exparte in the suit is sought to be set aside not by the defendant on record but by a person who did not come or was not brought on record promptly and hence apparently appears to be a third party. However, as we have already stated hereinabove, the person would be a representative-in-interest of the defendant judgment-debtor

In the case on hand, no transfer of property has been taken place and the decree passed by the trial Court is not an exparte decree and the same has been stayed by this Court, during the pendency of the stay order, the petitioner herein allegedly entered into alleged unregistered agreement

⁵ (2004) 2 SCC 601

with the plaintiff and 2 others who are not having valid right and title in the plaint schedule property.

17. Admittedly the plaintiff has not obtained registered sale deed either through the Court or through the defendants 3 and 4 i.e., owners of the plaint schedule property. The case of the plaintiff is that his title is based on unregistered suit agreement of sale and possession was not obtained. It is well settled that an agreement do not confer right or title or interest in the subject property. In a case of **Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana**⁶, the Apex Court held as follows:

We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of 'GPA sales' or 'SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immoveable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds

⁶ (2012) 1 SCC 656

of title, except to the limited extent of section 53A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales.

In the case on hand, the title of the plaintiff is unregistered agreement of sale only. He has not obtained any sale deed or possession. Therefore, the alleged unregistered sale agreement entered by the petitioner with the plaintiff and 2 others is a meaningless transaction, non-est and unheard that too pendency of the appeal in respect of the suit agreement of sale of the plaintiff at the stage of stay granted by this Court by staying the decree and judgment passed by the trial Court.

18. In a case of **Moresnar Yadaorao Mahajan vs. Vyankatesh Sitaram Bhedi**⁷, the Apex Court held as follows:

It can thus be seen that what has been held by this Court is that for being a necessary party, the twin test has to be satisfied. The first one is that there must be a right to some relief against such party in respect of the controversies involved in the proceedings. The second one is that no effective decree can be passed in the absence of such a party.

The claim of the petitioner is that, he entered into an unregistered agreement of sale with some third parties along with plaintiff in respect of the suit schedule property that too violation of the stay order granted against the plaintiff by this Court in a pending appeal. Therefore, the petitioner has no vested interest in the appeal schedule property in the present appeal, alleged agreement is prohibited by interim order of stay granted by this Court in the present appeal.

⁷ 2022 SCC online SC 1307

19. Admittedly, the petitioner is not a party to the suit agreement of sale. It is a well settled that intervenors were neither necessary nor proper parties for adjudication of the points involved in the appeal suit. The power to add parties does not mean that it should be exercised in a casual manner that the suit or proceeding should be tried *de novo*, therefore, the present alleged implead petition which is instituted in the year 2021 in the main appeal proceedings is nothing but an attempt to protract the appeal proceedings. In view of the aforesaid reasons and aforesaid case law, there are no merits in the application filed by the petitioner. Accordingly, the point is answered.

20. ***In the result***, I.A.No.1 of 2021 in A.S.No.585 of 2007 is ***dismissed***. No order as to costs.

V.GOPALA KRISHNA RAO, J

Date: 26.02.2024

sj

THE HON'BLE SRI JUSTICE V.GOPALA KRISHNA RAO

I.A.No.1 of 2021 IN A.S. No.585 of 2007

Date: 26.02.2024

sj