

**THE HON'BLE SMT. JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

**I.A.No.1 of 2023 in A.S.No.320 of 2023
and
A.S.Nos.1 and 5 of 2023**

COMMON ORDER:(Per Hon'ble Justice Moushumi Bhattacharya)

I.A.No.1 of 2023 in A.S.No.320 of 2023 is for leave to appeal against the impugned judgment and decree dated 14.09.2021 passed by the II Additional and Sessions Judge, Ranga Reddy District at L. B. Nagar in O.S.No.54 of 2021.

The facts leading to the impugned judgment:

2. The respondent No.1 in the appeals (plaintiff in the Suit) filed O.S.No.54 of 2021 for specific performance of an Agreement of Sale dated 11.03.2013, alleged to have been executed between respondent No.1 (plaintiff) and respondent Nos.2-11 (defendant Nos.1 - 10 in the Suit) in respect of the suit schedule property to the extent of Acs.146.05 guntas of land situated at Vattinagulapally Village, Rajendra Nagar, Ranga Reddy District. The respondent No.1/plaintiff claimed to have paid the total consideration of

Rs.1,46,12,500/- for purchase of the said land from respondent Nos.2-11/defendant Nos.1-10.

3. The respondent Nos.2-11/defendant Nos.1-10 filed a common written statement admitting to all the statements made in the plaint with regard to the Agreement of Sale including payment of consideration. The respondent Nos.2-11 (defendant Nos.1-10) prayed for dismissal of the Suit. The written statement does not disclose a defense on the merits of the Suit.

4. The respondent No.1/plaintiff filed an application under Order XII Rule 6 of the CPC - Judgment on Admissions - for a decree on the admissions made by the respondent Nos.2-11/defendant Nos.1-10.

The impugned judgment dated 14.09.2021:

5. The impugned judgment dated 14.09.2021 records the facts with regard to the Agreement of Sale executed between the respondent No.1/plaintiff and the respondent Nos.2-11/defendant Nos.1-10 and that the defendants admitted to the said Agreement of Sale in their written statement including with regard to receiving the

entire sale consideration from the respondent No.1/plaintiff. The impugned judgment further records that the defendants admitted to their obligation to register the property in favour of the plaintiff.

6. The Trial Court proceeded to decree the Suit on the basis of lack of resistance from the defendants or any objection raised by the defendants on the merits of the Suit. The Trial Court found that the plaintiff was entitled to specific performance of the Agreement of Sale and accordingly directed the defendants to execute the registered sale deed in favour of the plaintiff in respect of the suit schedule property within 3 months from the date of the impugned judgment.

7. The appellants in A.S.No.320 of 2023 seek leave to file the appeal against the impugned judgment on the ground that the appellants had purchased the same property/suit schedule property from the respondent Nos.2-11 (sellers) in 1983-1986. The appellants claim to be similarly-situated with one another and in physical possession of the suit schedule property on the strength of the sale

deeds which were executed by the respondent Nos.2-11 (sellers) through their authorized General Power of Attorney Holder.

8. The appellants claim that the title in the suit schedule property already stood conveyed to the appellants and the sellers were hence legally disentitled from conveying the same property to the respondent No.1 (plaintiff).

The law with regard to non-party appellants:

9. The provisions which are relevant to the issue at hand, that is, whether and how those who are not parties to the *lis* but impacted by a decision and are required to be brought on board, are as follows:

10. Section 96 of The Code of Civil Procedure, 1908 (CPC) provides for appeals from original decrees, and sub-section (1) thereof stipulates that an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the competent Court including an original decree passed *ex parte* (Section 96 (2)).

11. Order I Rule 10 (2) of the CPC permits the Court to add the name of any person who appears to be a proper party and who ought to have been joined or whose presence may be necessary for the Court to completely and effectively adjudicate upon the disputes and settle all the questions involved in the Suit.

12. Section 19 of The Specific Relief Act, 1963 deals with the persons against who specific performance of a contract may be enforced and includes, under sub-section (c), any person claiming under a title to the contract and to the knowledge of the plaintiff.

13. Section 6 of The Specific Relief Act, 1963 deals with Suits by persons dispossessed of immovable property; sub-section (4) thereof opens up the scope of the section to include any person to establish his/her title to the immovable property which forms the subject matter of the Suit, to recover the possession of such property.

14. Section 15 of The Specific Relief Act, 1963 enumerates the parties who may obtain specific performance of a contract.

15. The above provisions are in order of relevance to the present issue, that is, appeal by non-parties.

Case Law:

16. In *Smt. Jatan Kumar Golcha v. M/s. Golcha Properties (P) Ltd*¹, a 3-Judge Bench of the Supreme Court succinctly laid down the law by pronouncing that a person who is not a party to the Suit may prefer an appeal with the leave of the Appellate Court and such leave should be granted if the person would be prejudicially affected by the judgment.

17. In *My Palace Mutually Aided Co-operative Society v. B. Mahesh*², a 3-Judge Bench of the Supreme Court dealt with Sections 96-100 of the CPC and opined that any person who is not a party to the Suit but is affected by a judgment can prefer an appeal with the leave of the Court.

18. A Division Bench of this Court in *P. Chenga Reddy v. Kuppala Bala Subramanya*³, relying on a Full Bench decision of this Court in *Pullayya v. Nagabhushanam*⁴, took the same view but proceeded to grant leave primarily on Explanation VI of Section 11 of the CPC

¹1970 (3) Supreme Court Cases 573

²2022 SCC OnLine SC 1063

³2014 SCC OnLine AP 269

⁴(1961) II An.W.R. 204

which provides for specific situations where persons interested in respect of a public or private right shall be deemed to have a claim under the persons litigating *bona fide* in respect of such right. The Division Bench also relied on *Smt. Jatan Kumar Golcha* and a series of decisions of the Calcutta High Court and Bombay High Court to hold that a non-party can prefer an appeal where the parties aggrieved by the judgment of the Trial Court have demonstrated *prima facie* that the concerned non-party has been affected by the judgment. The decisions referred to by the Division Bench in *P. Chenga Reddy* included *United Commercial Bank v. Hanuman Synthetics*⁵, where the Calcutta High Court, relying on *Smt. Jatan Kumar Golcha*, held that the appeal at the instance of a non-party was maintainable.

19. The Bombay High Court in *The Province of Bombay v. Western India Automobile Association*⁶, was of the same opinion, i.e., a non-party can approach the Appellate Court and ask for leave to appeal although no right of appeal is vested on such party and that leave

⁵AIR 1985 Calcutta 96

⁶AIR (36) 1949 Bombay 141

should be granted in appropriate cases where decision has adversely affected that party.

20. Both the Calcutta High Court and Bombay High Court relied on a decision of the English Court in *Re. Securities Insurance Company*⁷ where it was held that a person is entitled to appeal with the leave of the Court if he/she can make out even a *prima facie* case of being prejudicially affected by the order.

21. *Baldev Singh v. Surinder Mohan Sharma*⁸, cited by the respondents, also puts forth the same view i.e., an appeal under Section 96 of the CPC would be maintainable at the instance of a person aggrieved by and dissatisfied with the judgment and decree.

22. In *Dimmiti Pullaya v. Abdebolu Nagabhushanam*⁹, a Full Bench of the High Court of Andhra Pradesh considered the question whether leave to appeal could be granted to a person who is not a party to a proceeding *eo nomine* but who would be affected by the decision in the proceedings brought in a respective capacity under Order I Rule

⁷(1894) 2 Ch 410

⁸(2003) 1 SCC 34

⁹AIR 1962 AP 140 (FB)

8 of the CPC. The Court relied upon *Bombay Province's case* and held that the only remedy available to such person is to approach the Appellate Court and ask for leave to appeal which the Appellate Court may grant in proper cases.

23. The position in England on leave to appeal was articulated by Lindley, J in *Re Securities Insurance Company* as follows:

".....A person who without being a party is either bound by the order or is aggrieved by it, or is prejudicially affected by it, cannot appeal without leave,... If a person alleging himself to be aggrieved by an order can make out even a prima facie case why he should have leave he will get it; but without leave he is not entitled to appeal."

24. The consensus from the above decisions unerringly is that a non-party to a Suit or proceeding can prefer an appeal on being prejudicially-affected by a judgment or order with the leave of the Court.

25. In other words, persons like the appellants, who were not made parties to the Suit, have a right to seek leave to appeal from the judgment if such persons can show, even *prima facie*, that they are adversely affected by the judgment or would be bound by it by

reason of the facts shown to the Appellate Court. It would indeed be a travesty of justice if persons who are not made parties to a Suit for ulterior motives or even through inadvertence, are deprived of the right to assail the judgment before the Appellate Court solely on the ground that they were not parties to the Suit *eo nomine*. There may be several reasons why a plaintiff would choose not to bring a person/entity on board as a defendant including that of a collusive decree. The Court, in such cases, cannot sit powerless and shut the aggrieved persons out from ventilating their grievance against the order/judgment.

26. Sections 96-100 of the CPC deal with the procedure for filing appeals from original decrees and do not restrict the categories of persons who can prefer an appeal. In essence, any person who is not a party to the Suit but is affected by a judgment can prefer an appeal with the leave of the Court. Section 96 of the CPC simply provides for appeals from original decrees and does not differentiate between parties and non-parties to the Suit in the context of preferring an appeal. This seemingly simple benchmark must however be established by the person to the Appellate Court.

27. A conjoint reading of Section 96 of the CPC and the decisions pronounced by the Courts would decisively tilt the argument in favour of leave to appeal despite the appellants not being made parties to the Suit. The appellants are irrevocably affected by the judgment.

The appellants are also necessary parties:

28. *Kasturi v. Iyyampermual*¹⁰ delineated necessary and proper parties to a Suit for specific performance of a contract. The Supreme Court evolved 2 tests for determining the issue of who would be a necessary party and concluded that necessary parties are those in the absence of whom an effective decree cannot be passed in the Suit. The Supreme Court further proceeded to hold that proper parties were those whose presence would be necessary for complete and effective adjudication of the questions involved in the Suit. In the facts of that case, the Supreme Court disallowed respondent Nos.1, 4 - 11 from making an independent claim adverse to the title of some of the other respondents as they were neither necessary nor

¹⁰(2005) 6 SCC 733

proper parties and hence not entitled to join the Suit as party-defendants for specific performance of the contract for sale.

29. In *Bharat Karsondas Thakkar v. Kiran Construction Company*¹¹, the Supreme Court was again of the view that a stranger to an Agreement for Sale can be permitted to be added as a party in a Suit for specific performance under Section 15 of The Specific Relief Act, 1963. The Supreme Court found the appellant therein to be a third party to the agreement who fell outside the scope of Section 15 (a) of The Specific Relief Act, 1963, which restricts the categories of persons for obtaining specific performance to a “party” to the contract. The facts of that case however involved a consent decree obtained by the appellant and amendment of the plaint sought by the respondent by changing the nature and character of the original Suit. This was the specific finding of the Supreme Court.

30. In *V.N.Krishna Murthy v. Ravikumar*¹², the Supreme Court came to a specific finding that the appellants would not be bound by

¹¹ (2008) 13 SCC 658

¹²(2020) 9 SCC 501

the judgment of the Trial Court as they were not aggrieved persons. The factual basis of the finding was that the sale deeds which formed the basis of the appellants' claim were executed on the basis of a General Power of Attorney which had nothing to do with the Agreement of Sale. The Supreme Court was additionally of the view that the judgment of the Trial Court was not a judgment *in rem* and was only binding as between the plaintiffs and the defendants in the Suit as opposed to the appellants who were not parties to the Suit.

31. It is also relevant that the decision of the Supreme Court in *My Palace Mutually Aided Co-operative Society* (relied upon by the appellants) was a later decision which would hence be binding on this Court.

32. In *Shanmugasundaram v. Diravia Nadar (Dead)* by L.Rs.¹³, the Supreme Court held that where the property is inherited by brothers and sisters as co-owners, the 2 brothers could not have agreed to sell the entire property in the absence of partition of the property between the siblings. The Supreme Court further held that in the

¹³2005 (10) SCC 728

event of sale of undivided shares, the vendee would be required to file a Suit for partition to work out his right in the property.

33. The Supreme Court came to a similar view in *Pemmada Prabhakar v. Youngmen's Vysya Association*¹⁴ where it was reiterated that the defendant Nos.1 and 2 did not have the right to execute an Agreement of Sale in the absence of an absolute right to the property in question and consequently, the Agreement was not enforceable in law under Section 17 of The Specific Relief Act, 1963. Section 17 of The Specific Relief Act, 1963 stipulates that a contract to sell or let out any immovable property cannot be specifically enforced in favour of a vendor or lessor who does not have an absolute right and title over the property.

Conclusion:

34. Coming to the appeal at hand, the appellant in A.S.No.1 of 2023 is the mother of the respondent No.10 (defendant No.9 in the Suit). The appellant and the respondent No.10 jointly owned Acs.11.04 guntas of land which is part of the suit schedule property.

¹⁴2015 (5) SCC 355

The appellant claims that her son i.e., respondent No.10 entered into an Agreement of Sale with respondent No.1 (plaintiff in the Suit).

35. In A.S.No.5 of 2023, the appellant Nos.1-4 are the brothers and the appellant No.5 is the mother of the respondent No.8 (defendant No.7 in the Suit). The appellants and respondent No.8 jointly owned Acs.29.03 guntas of land which is part of the suit schedule property.

36. In A.S.No.320 of 2023, the appellants, who are 100 in number, claim that they have purchased the plots from the General Power of Attorney Holder of the respondent Nos.2-11 under registered sale deeds.

37. The appellants in all the 3 appeals claim that the respondent Nos.2-11 entered into an Agreement of Sale with the respondent No.1 without the knowledge of the appellants and that the said respondents were hence not authorized to alienate the share of the appellants in favour of the respondent No.1.

38. Admittedly, the respondent Nos.2-11 have neither appeared in the present appeals nor contested the same. Consequently, no document has been shown to the Court to dispute the fact of joint

ownership of the properties in question by the appellants with the respondent Nos.10 and 8 in A.S.Nos.1 and 5 of 2023.

39. The impugned decree allowed the respondent No.1/plaintiff's claim for specific performance of the Agreement of Sale executed between the respondent No.1 and the respondent Nos.2-11, who were the plaintiff and the defendant Nos.1-10, respectively, in the Suit.

40. The appellants state that they are aggrieved by the impugned judgment since they were prior purchasers/owners of the suit schedule property being sold by the respondent Nos.2-11 to the appellants through their General Power of Attorney Holder. The respondent Nos.2-11 were the defendants in the Suit and allegedly sold the suit schedule land to the appellants as plots in 1983-1986.

41. The respondent No.1/plaintiff objects to the maintainability of the appeal on the ground that the appellants are strangers to the contract between the respondent No.1 and the respondent Nos.2-11/defendant Nos.1-10. The respondent No.1 sought for specific performance of the Agreement of Sale executed between the

respondent No.1 and respondent Nos.2-11 in O.S.No.54 of 2021. The learned II Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, decreed the Suit on 14.09.2021 holding that the respondent No.1/plaintiff is entitled for specific performance of the Agreement of Sale dated 11.03.2013 with respect to the suit schedule property against the defendant Nos.1-10 (respondent Nos.2-11 in the appeals). The Suit was also decreed by directing the defendant Nos.1-10 to execute the registered sale deed in favour of the plaintiff.

42. Since the appellants claim to be the joint owners of the property which was decreed in favour of the plaintiff/respondent No.1, the appellants would naturally be bound by the impugned decree and would, in the least, be the actually aggrieved persons.

43. In the present cases, the appellants are third parties/non-parties and have questioned the judgment and decree of the Trial Court dated 14.09.2021 passed in O.S.No.54 of 2021 filed by the respondent No.1 (plaintiff).

44. The question before the Court is simply whether the appellants, who were not parties to the Suit in the Trial Court, have

a right to file the present appeals. The appellants' title to the joint ownership of the suit schedule properties is not being decided at this stage. The only point for consideration is whether the appellants in A.S.No.320 of 2023 have a right to file the appeals.

45. Even without deciding the question of joint ownership and in the absence of any rebuttal to that issue, there is little doubt that the appellants' claim to the suit schedule property would irrevocably be affected by the impugned decree.

46. Relying on the law pronounced by the Supreme Court, the appellants, as persons irretrievably aggrieved, would certainly have a right to appeal against the impugned decree.

47. Given the facts of the present appeals, we are unable to comprehend the first respondent's stiff resistance to the maintainability of the application for leave to appeal. None of the decisions cited come to the aid of the respondent No.1. It is further significant that respondent Nos.2-11/ defendant Nos.1-10, who sold the suit schedule property to the respondent No.1 (plaintiff), have chosen not to appear in the appeals or contest the maintainability of

the appeals. In the context of the impugned judgment, the sellers have played truant and the cases presented by the appellants in all the appeals unerringly point to the appellants being seriously aggrieved by the impugned judgment dated 14.09.2021. We have no doubt that the appellants are persons aggrieved by the impugned judgment and we accordingly grant leave to appeal on this basis.

48. I.A.No.1 of 2023 in A.S.No.320 of 2023 is accordingly allowed. The appellants in A.S.No.320 of 2023 are granted leave to appeal from the impugned judgment and decree dated 14.09.2021.

List the appeals on 24.06.2024 for hearing the appeals on merits.

MOUSHUMI BHATTACHARYA, J

NAGESH BHEEMAPAKA, J

Date: 11.06.2024

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