

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CIVIL REVISION PETITION No.1336 of 2024

Between:

1.GOLIVI RAMANAMMA, W/O. MOHANA RAO, AGED ABOUT 50 YEARS, HOUSEHOLD DUTIES AND CULTIVATION R/O. D.NO. 1-323, REGULAPADU VILLAGE AND POST, KOTABOMMALI MANDAL, SRIKAKULAM DISTRICT.

...PETITIONER

AND

1.CHALLA LAKSHMI, W/O. VENKATA RAMANA MURTHY, AGED ABOUT 45 YEARS, HOUHOLD DUTIES, R/O. LINGALAPADU VILLAGE, JALUMURU MANDAL, PRESENTLY RESIDING AT RANDI RAJARAO, MUNSABUPETA VILLAGE BESIDE GAYATRI COLLEGE, SRIKAKULAM MANDAL AND DISTRICT.

2.ALLU CHANDRA SEKHAR, S/O. LAKSHMINARAYANA, AGED ABOUT 43 YEARS. EMPLOYEE, R/O. LINGALAVALASA VILLAGE, RANA POST, JALUMURU MANDAL SRIKAKULAM DISTRICT.

3.PANCHIREDDY SUHASINI, W/O. ALLU CHANDRASEKHAR, AGED ABOUT 42 YEARS. EMPLOYEE, R/O. LINGALAVALASA VILLAGE, RANA POST, JALUMURU MANDAL, SRIKAKULAM DISTRICT.

...RESPONDENT(S).

DATE OF ORDER PRONOUNCED : **19.11.2024**

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

1. Whether Reporters of Local Newspapers may be allowed to see the order? : Yes/No
2. Whether the copy of order may be marked to Law Reporters/Journals? : Yes/No
3. Whether His Lordship wish to see the fair copy of the order? : Yes/No

JUSTICE SUBBA REDDY SATTI

*** HONOURABLE SRI JUSTICE SUBBA REDDY SATTI
+ CIVIL REVISION PETITION No.1336 of 2024**

% 19.11.2024

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...RESPONDENT(S).

! Counsel for Petitioner : Sri Aravala Rama Rao

^ Counsel for Respondents :

< Gist:

> Head Note:

? Cases referred:

- 1) (2012) 5 SCC 370
- 2) (2021) 6 SCC 418
- 3) AIR 1954 SC 75
- 4) AIR 2022 SC 1973
- 5) (2024) 8 (SCC) 83
- 6) (2015) 5 SCC 223

This Court made the following:

APHC010273642024



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

[3331]

TUESDAY, THE NINETEENTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

CIVIL REVISION PETITION NO: 1336/2024

Between:

1. GOLIVI RAMANAMMA, W/O. MOHANA RAO, AGED ABOUT 50 YEARS, HOUSEHOLD DUTIES AND CULTIVATION R/O. D.NO. 1-323, REGULAPADU VILLAGE AND POST, KOTABOMMALI MANDAL, SRIKAKULAM DISTRICT.

...PETITIONER

AND

1. CHALLA LAKSHMI, W/O. VENKATA RAMANA MURTHY, AGED ABOUT 45 YEARS, HOUSEHOLD DUTIES, R/O. LINGALAPADU VILLAGE, JALUMURU MANDAL, PRESENTLY RESIDING AT RANDI RAJARAO, MUNSABUPETA VILLAGE BESIDE GAYATRI COLLEGE, SRIKAKULAM MANDAL AND DISTRICT.

2. ALLU CHANDRA SEKHAR, S/O. LAKSHMINARAYANA, AGED ABOUT 43 YEARS. EMPLOYEE, R/O. LINGALVALASA VILLAGE, RANA POST, JALUMURU MANDAL SRIKAKULAM DISTRICT.

3. PANCHIREDDY SUHASINI, W/O. ALLU CHANDRASEKHAR, AGED ABOUT 42 YEARS. EMPLOYEE, R/O. LINGALVALASA VILLAGE, RANA POST, JALUMURU MANDAL, SRIKAKULAM DISTRICT.

...RESPONDENT(S):

Petition under Article 227 of the Constitution of India, praying that in the circumstances stated in the grounds filed herein, the High Court may be pleased to Petitioner present this Memorandum of Civil Revision Petition against the order dated 14.03.2024 in IA.No.628/2023 in O.S.No.60/2016 on the file the Court of Judge Family Court cum III Additional District and Sessions Judge, Srikakulam

IA NO:1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to grant stay of all further proceedings in O.S. No. 60 of 2016 in the court of the Judge, Family Court cum III Additional District & Sessions Court, Srikakulam pending Civil Revision Petition and pass such

Counsel for the Petitioner:

1.ARAVALA RAMA RAO

Counsel for the Respondent(S):

1.

The Court made the following:**ORDER**

The plaintiff in the suit filed the above revision against the order dated 14.03.2024 in I.A.No.628 of 2023 in O.S.No.60 of 2016 on the file of the Judge, Family Court-cum-III Additional District Judge, Srikakulam.

2. Plaintiff filed the suit O.S.No.60of 2016 seeking specific performance of agreement of sale dated 12.08.2015, against the sole defendant.

3. Facts, in the plaint, in brief, are that an agreement of sale was entered into on 12.08.2015 between the plaintiff and defendant for a sale consideration of Rs.19,30,000/-. At the time of the agreement of sale, the

plaintiff paid an amount of Rs.2,00,000/- as advance and the balance sale consideration has to be paid on or before December 2015. The defendant approached the plaintiff and requested to arrange some sale consideration amount and the plaintiff paid Rs.2,50,000/- through her husband on 25.09.2015 and the defendant passed on a receipt, which was scribed by her husband. On 23.01.2016, the defendant received an amount of Rs.1,50,000/- from the plaintiff's husband and passed a receipt in the presence of witnesses. The said receipt was scribed by the defendant's husband. Thus, the defendant received a total amount of Rs.6,00,000/- from the plaintiff. The defendant failed to perform her part of the contract and hence, the plaintiff issued a legal notice dated 04.03.2016, for which the defendant issued a reply notice on 26.03.2016. Hence, the suit.

4. The defendant filed a written statement and did not deny the execution of the agreement of sale. It was pleaded that the plaintiff had not come to the Court with clean hands. Despite requests made by the defendant, the plaintiff failed to perform her part of the contract. The defendant approached the plaintiff to perform her part of the contract before December 2015, however, the plaintiff failed to perform the same. The defendant denied the receipts said to have been issued by her husband. The defendant to meet expenses, sold away the plaint schedule property to third parties and the said fact is known to the plaintiff and eventually, prayed to dismiss the suit.

5. The trial in the suit was commenced. When the suit was coming up for arguments, the plaintiff filed three interlocutory applications i.e. to implead the subsequent purchasers; one application under Section 45 of

the Indian Evidence Act and the other application is filed under Order XVIII Rule 17 of CPC.

6. In the affidavit filed in support of the petition in I.A.No.628 of 2023, to implead the subsequent purchasers, it was pleaded that after issuance of legal notice, the defendant sold the property to one Allu Chandra Sekhar and his wife Suhasini under a registered sale deed dated 27.04.2016 *vide* document No.2627 of 2016. Hence, they are necessary parties.

7. A counter was filed on behalf of the defendant as well as proposed parties opposing the application. It was contended that the plaintiff was aware of the sale and filed the petition only to procrastinate the proceedings.

8. By order dated 14.03.2024, the application was dismissed. Aggrieved by the same, the above revision is filed.

9. Heard Sri Aravala Ramarao, learned counsel for the petitioner. Despite service of notice, none appeared on behalf of respondents 1 to 3.

10. Learned counsel for the petitioner would submit that the proposed parties are necessary parties to the suit. After the issuance of legal notice, the sole defendant alienated the property in favour of the proposed parties, and the fact was unknown to the petitioner. He would also submit that the document dated 27.04.2016 is nominal, and that the trial Court failed to exercise its jurisdiction properly.

11. Now, the point for consideration is:

Does the order dated 14.03.2024 in I.A.No.628 of 2023 in O.S.No.60 of 2016 suffer from illegality or perversity warranting interference by this Court under Article 227 of the Constitution of India?

12. The suit was filed in July 2016. The written statement was filed, immediately, and it was contended that since the plaintiff failed to come forward to perform her part of the contract, the defendant faced many problems and hence, sold away the plaint schedule property to third parties and the said fact is also known to the plaintiff.

13. Thus, by filing a written statement the defendant indicated/informed alienation of property. The plaintiff examined herself as P.W.1 and examined P.Ws.2 to 4. The defendant's husband was examined as D.W.1 and the scribe of Ex.A1 was examined as D.W.2. When the suit was coming up for arguments, the plaintiff filed the above application along with two other applications. The defendant admittedly sold the property to the proposed parties vide document No.2627 of 2016. The plaint schedule property is a vacant site in an approved layout.

14. Before proceeding further, it is appropriate to extract Order I Rule 10(2), which reads thus:

10. Suit in the name of the wrong plaintiff.—

(1) ...

(2) **Court may strike out or add parties.**—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.

15. The object of sub-rule 2 of Rule 10 of Order I, is to bring before the Court all persons, who are parties to dispute relating to the subject matter so that the dispute may be determined without delay, inconvenience and expenses of separate occasions. It is a settled principle of law that the rights of a subsequent purchaser of the property, pending suit, are subservient to the rights of parties under the decree, which may be made in the suit. At the same time, one should not be oblivious that the subsequent purchasers claiming through the same vendor and the same property can be added as parties to the suit to avoid the multiplicity of proceedings.

16. A necessary party ought to be joined as a party to the suit, and in whose absence, an effective decree cannot be passed by the Court. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

17. Of course, in the case at hand, the suit is one filed for specific performance of the agreement of sale, dated 12.08.2015. A legal notice was issued by the plaintiff, before instituting the suit on 04.03.2016. Reply notice, dated 26.03.2016 was issued by the defendant through Advocate. The suit was filed, as seen from the copy of the plaint, in June

2016. After issuance of the legal notice, before the institution of the suit, the defendant alienated the property to the proposed parties by registered document No.2627 of 2016 dated 27.04.2016. It is also an undisputed fact that, in the written statement filed by the defendant, it was pleaded that the defendant, sold away the property to the third parties and the said fact is known to the plaintiff.

18. The plaintiff, before filing the suit ought to have verified the encumbrances over the property. Had the plaintiff verified the encumbrance certificate, he would have impleaded, the subsequent purchaser of the property, after the agreement to sell before filing the suit, as a party defendant. Normally, the Trial Courts do not insist on filing an Encumbrance Certificate at the stage of numbering the suit. However, in cases of this nature, by insisting upon the filing of an encumbrance certificate, the dispute can be adjudicated efficiently. The Advocate should have advised the plaintiff to get the encumbrance certificate so that the present situation could have been avoided.

Importance and uses of Encumbrance Certificates in judicial proceedings:

19. Indian society, at large, including the international community constantly evaluates every institution particularly the institutions like the Justice Delivery System. The journey of civil litigation and working of the Code of Civil Procedure for the past one and half century has faced many challenges. With the lessons from experience, substantial changes are brought in during 1908, 1976 and 2002. Yet, the delays remain static.

20. Encumbrance Certificate sometimes plays a vital role and it indicates the bona fides of the parties qua the efforts put in by them

regarding verifying the information, particularly in the context of Section 3 of The Transfer of Property Act, which deals with constructive notice of certain things as to registered transactions. Of course, the Courts, normally at the numbering stage may not insist on filing of encumbrance certificate. The duty is not confined to the Court. Every stakeholder must be fair and dutiful towards the judicial institution. When a litigant is expecting relief from the judicial system, he/she/it is supposed to be diligent. One who is not diligent cannot claim that he is bona fide. A person, before, initiating litigation does not care to verify antecedents of the property viz., the subject matter of the litigation, by making reasonable and possible enquiries which one could easily make, he/she cannot subsequently blame anybody. The principles of fairness, good conscience, and equity, demand that one must be fair to the Court.

21. A party filing a suit for specific performance, if verified by obtaining an Encumbrance Certificate as to right being intact with his vendor, can easily know if any other person is having interest and if such interest is after the interest of the plaintiff (the person initiating litigation). In such a case, even the subsequent purchaser as well can be added and the subsequent purchaser becomes not merely proper but a necessary party to the litigation. The rights and remedies of such subsequent purchaser against the common vendor can also be considered and there will be wider scope for considering the bona fides of all ends if such a party is made.

22. The Encumbrance Certificate may not disclose everything, may not be totally reliable, and may have its defects. However, the Encumbrance Certificate would indicate at least fairness and bona fides on the part of the stakeholders concerned if obtained, verified and enclosed with his

plaint. Such exercise is advisable with the changing trends in civil litigation and the same will avoid delays.

23. By filing the encumbrance certificate at the first instance, i.e. at the time of numbering the suit, the plaintiff will always be in an advantageous situation. The some of observations in Maria Margarida and Rahul S.Shah cases are extracted here with.

24. In **Maria Margarida Sequeira Fernandes Vs. Erasmo Jack de Sequeira**¹, the Hon'ble Apex Court observed as follows:

Truth as guiding star in the judicial process

32. In this unfortunate litigation, the Court's serious endeavour has to be to find out where in fact the truth lies.

33. The truth should be the guiding star in the entire judicial process. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth.

40. World over, modern procedural codes are increasingly relying on full disclosure by the parties. Managerial powers of the Judge are being deployed to ensure that the scope of the factual controversy is minimised.

52. Truth is the foundation of justice. It must be the endeavour of all the judicial officers and Judges to ascertain truth in every matter and no stone should be left unturned in achieving this object. Courts must give greater emphasis on the veracity of pleadings and documents in order to ascertain the truth.

69. The person averring a right to continue in possession shall, as far as possible, give a detailed particularised specific pleading along with

¹ (2012) 5 SCC 370

documents to support his claim and details of subsequent conduct which establish his possession.

71. Apart from these pleadings, the court must insist on documentary proof in support of the pleadings. **All those documents would be relevant which come into existence after the transfer of title or possession or the encumbrance as is claimed. While dealing with the civil suits, at the threshold, the court must carefully and critically examine the pleadings and documents.** (emphasis is mine)

25. The Hon'ble Apex Court in **Rahul S.Shah Vs. Jinendra Kumar Gandhi**², in connection with protracted execution proceedings observed as follows:

1. ... The course of litigation highlights the malaise of constant abuse of procedural provisions which defeat justice, i.e. frivolous attempts by unsuccessful litigants to putting up spurious objections and setting up third parties, to object, delay and obstruct the execution of a decree.

23. This court has repeatedly observed that remedies provided for preventing injustice are actually being misused to cause injustice, by preventing a timely implementation of orders and execution of decrees. This was discussed even in the year 1872 by the Privy Counsel in *The General Manager of the Raja Durbhunga vs. Maharaja Coomar Ramaput Sing*, (1871-72) 14 Moore's I.A. 605, which observed that the actual difficulties of a litigant in India begin when he has obtained a decree. This Court made a similar observation in *Shub Karan Bubna @ Shub Karan Prasad Bubna vs. Sita Saran Bubna*, (2009) 9 SCC 689, wherein it recommended that the Law Commission and the Parliament should bestow their attention to provisions that enable frustrating successful execution. The Court opined that the Law Commission or the Parliament must give effect to appropriate recommendations to ensure such amendments in the Code of Civil Procedure, 1908, governing the

² 2021 (6) SCC 418

adjudication of a suit, so as to ensure that the process of adjudication of a suit be continuous from the stage of initiation to the stage of securing relief after execution proceedings. The execution proceedings which are supposed to be handmaid of justice and sub serve the cause of justice are, in effect, becoming tools which are being easily misused to obstruct justice.

27. This is anti-thesis to the scheme of Civil Procedure Code, which stipulates that in civil suit, all questions and issues that may arise, must be decided in one and the same trial. Order I and Order II which relate to Parties to Suits and Frame of Suits with the object of avoiding multiplicity of proceedings, provides for joinder of parties and joinder of cause of action so that common questions of law and facts could be decided at one go.

31. As the trial continues between specific parties before the Courts and is based on available pleadings, sometimes vague description of properties raises genuine or frivolous third-party issues before delivery of possession during the execution. A person who is not party to the suit, at times claims separate rights or interests giving rise to the requirement of determination of new issues.

36. Some of the measures in that regard would include that before settlement of issues, the Court must, in cases, involving delivery of or any rights relating to the property, exercise power under Order XI Rule 14 by ordering production of documents upon oath, relating to declaration regarding existence of rights of any third party, interest in the suit property either created by them or in their knowledge. It will assist the court in deciding impleadment of third parties at an early stage of the suit so that any future controversy regarding non-joinder of necessary party may be avoided. It shall ultimately facilitate an early disposal of a suit involving any immovable property. (emphasis is mine)

26. In the context of the observations of the Hon'ble Apex Court in **Rahul's** case (*supra-1*) especially in Para-36 and the observations in **Maria's** case (*supra-2*), this court is of the considered opinion that insisting on the filing of an encumbrance certificate at the stage of the numbering of the suit may arrest further delays and speed up the trial of the suit at various stages including granting of ad-interim injunction orders. In some cases, the parties to the litigation are creating third-party interest pending the suit and the same can be avoided if an injunction is granted based on the facts of the case and material. An Encumbrance Certificate will help the plaintiff in such circumstances. So that third-party innocent purchasers will not be victims in the hands of unscrupulous litigants. Getting an Encumbrance certificate in the present day circumstances is not a herculean task. Had the Court insisted on the filing of E.C. at the time of numbering the suit, at the fag end of the suit there is no need for the filing of I.A. like in this suit, seeking to implead third-party purchasers as party-defendants. If this course is adopted, even the suits can be disposed of as early as possible without delay, including, the time spent in I.As.

27. After the judgment and decree, in case the suit is decreed, the third-party purchaser, cannot complain his/her absence and collusion between the parties to the suit. When it comes to the execution of a decree for a specific performance, the age-old adage that the troubles of the decree-holder commence from the decree can be avoided. If the subsequent purchaser claims through the same vendor, arrayed as a party defendant, he/she will contest the suit and the judgment pronounced binds everyone to the suit. In that way not only precious time will be saved but also disputes will be dealt with judiciously and efficiently.

28. Normally in a suit for the specific performance of a contract, the contracting parties alone are proper and necessary. The Court will not adjudicate third-party rights. However, in cases of the one on hand, even the purchaser of the property from the same vendor is a necessary party. By arranging the purchaser, after the agreement of sale, valuable judicial time can be saved. In fact, such a step is not difficult if one verifies the encumbrance certificate, which will reflect all the registered transactions. The importance of arranging the subsequent purchaser as a party defendant is discussed *infra*. If proper parties are shown, looking at the encumbrance certificate, the time spent in interlocutory applications can be avoided be it pending the suit or after the decree. This procedure may also inspire confidence in the general public. 'Let the litigant not miss faith in the system'.

29. The litigants and advocates should not forget that in the administration of justice, Judges and lawyers play equal roles. Like Judges, lawyers also must ensure that truth triumphs in the administration of justice.

30. The decided cases show that in a suit for partition even at the stage of the final decree, innocent purchasers, after coming to know about the preliminary decree, are filing petitions seeking impleadment. The same is the situation even in suits for declaration and perpetual injunctions. To avoid the multiplicity of the proceedings, the parties should file the encumbrance certificate along with the plaint, which will ease future litigation. Even the Courts at the numbering stage, in a given case, direct the parties to file encumbrance certificates, of course, it is always in the interest of parties as discussed *supra*.

31. The case at hand is a classic example. As discussed *supra*, despite the specific averment in the written statement, I.A. was filed at the fag end of the suit. Of course, as discussed *supra*, there are laches on the part of the plaintiff. However, the Hon'ble Apex Court dealt with the necessity of arranging the subsequent purchaser from the same vendor in a suit for specific performance about six decades back.

32. In **Lala Durga Prasad and another Vs. Lala Deep Chand and Others**³, the Hon'ble Apex Court observed as follows:

42. In our opinion, the proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to **join in the conveyance so as to pass on the title** which resides in him to the plaintiff. He does not join in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff. This was the course followed by the Calcutta High Court in *Kafiladdin v. Samiraddin (I)*, and appears to be the English practice. See *Fry on Specific Performance*, 6th edition, page 90, Paragraph 207 ; also *Potter v. Sanders(2)*. We direct accordingly ..." (**emphasis is mine**)

33. In **P. Ramasubamma Vss. V. Vijayalakshmi**⁴, the Hon'ble Apex Court held that in a suit for specific performance, the agreement holder doesn't need to seek cancellation of the sale deed executed in favour of a subsequent purchaser. It is sufficient to implead subsequent purchaser in the suit and seek relief of specific performance against the original owner and also a direction to the subsequent purchaser to join in the execution of the sale deed to completely convey title to the agreement holder.

³ AIR 1954 SC 75

⁴ AIR 2022 SC 1973

34. In **Maharaj Singh Vs. Karan Singh**⁵, the Hon'ble Apex Court observed as under

24. In view of clause (b) of Section 19, the defendants who are claiming under the sale deeds executed after the execution of the suit agreement can be subjected to a decree of specific performance as the suit agreement can be enforced specifically against such defendants unless they are bona fide purchasers without the notice of the original contract. When, in a given case, the defendants, who are subsequent purchasers, fail to prove that they entered into the sale deed in good faith and without notice of the suit agreement, in view of Section 19(b), a decree for specific performance can be passed against such defendants. Therefore, in such a case where Section 19(b) is applicable, under the decree of specific performance, the subsequent purchasers can be directed to execute the sale deed along with the original vendor. There is no necessity to pray for the cancellation of the subsequent sale deeds.”

Also see **Rathnavathi & Anr Vs. Kavita Ganashamdas**⁶.

35. In the case at hand, as discussed *supra* despite the written statement filed by the defendant, the plaintiff waited till the suit was coming up for arguments and filed the application, which shows that the plaintiff is not diligent. However, to avoid multiplicity of the proceedings coupled with the ratio in **Lala Durga Prasad's** case, this Court deems it appropriate that the subsequent purchasers of the suit schedule property, before filing the suit are also necessary parties for proper adjudication of the suit. Since the plaintiff procrastinated filing of application, this Court deems it appropriate to impose costs in the interests of justice and equity.

⁵ (2024) 8 SCC 83

⁶ 2015 (5) SCC 223

36. The trial Court failed to exercise the jurisdiction vested with it and hence the order under revision is liable to be set aside.

37. Given the above discussion, this Civil Revision Petition is allowed on payment of costs Rs.25,000/- (Rupees twenty five thousand only), payable by the plaintiff to the District Legal Services Authority, Srikakulam, within three weeks from the date of receipt of a copy of this order. If the plaintiff fails to pay the amount within the stipulated time, the order passed by this Court stands rescinded without reference to any further order.

The Plaintiff shall file a neat copy of the plaint. Learned Trial Court shall issue notice to the proposed parties. Since the suit is of the year, 2018, the trial Court shall dispose of the suit as expeditiously as possible.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE SUBBA REDDY SATTI

Note: LR Copy to be marked.
B/O
PVD/IKN