

Chodem Jayakumari Vs Thanneru Venkata Krishnaiah and Another

Court: Andhra Pradesh High Court

Date of Decision: Nov. 16, 2011

Acts Referred: Civil Procedure Code, 1908 (CPC) – Order 1 Rule 10, Order 1 Rule 10(2), Order 1 Rule 3

Citation: (2012) 2 ALD 109 : (2012) 2 ALT 38

Hon'ble Judges: G. Chandraiah, J

Bench: Single Bench

Advocate: C. Subodh, for the Appellant; Ch.C. Krishna Reddy, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

G. Chandraiahc

1. Heard both the counsel.

2. Aggrieved by the order and decree dated 27.01.2011 passed by the court of I Additional District and Sessions Judge, Nellore in

I.A.No.1870/2009 in O.S.No.69/2008, in dismissing petition filed by the proposed party under Order 1 Rule 10 of C.P.C. to come on record as

2nd defendant, the present revision is filed.

3. The plaintiff filed the suit for specific performance against the defendant. The case of the plaintiff is that the father of the defendant late

Krupanandam, executed a settlement deed dated 2.6.1992 in favour of his son, who is the defendant and thereafter, the defendant raised loan and

constructed the building. He offered to sell the same to the plaintiff for a consideration of Rs.13,70,000/- and received a sum of Rs.1,00,000/- and

subsequently on 22-10-2007, the defendant also received Rs.2,00,000/- towards advance of sale consideration. Thereafter, as the defendant

failed to execute the sale deed, the plaintiff filed the suit for specific performance.

4. The case of the proposed party is that subsequent to the execution of settlement deed in favour of the defendant by his father Krupanandam, he

filed a suit in O.S.No.272/2008 on the file of I Additional Junior Civil Judge, Nellore for cancellation of the settlement deed and the same is

pending. Her father late Krupanandam died on 21.5.2008 and executed his last will and testament on 13.5.2008 bequeathing the plaint schedule

property in her favour and thereafter, he she is proper and necessary property.

5. By the impugned order, the court below observed that as the settlement deed was acted upon and as there was no semblance of title, dismissed

the I.A. Hence, the present revision.

6. From the material available on record, it could be seen that the

settlement deed was executed on 2.6.1992 and thereafter, the 1st respondent also constructed house and thus, it is clear that the settlement deed

was acted upon. The case of the plaintiff is that the defendant offered to sell the suit schedule property and received certain amount in the year

2007 and thereafter, as he failed to execute the sale deed, the suit was filed for specific performance of sale. The proposed party, is not a party to

the suit agreement and hence the decree between the present parties may not be binding on her. Moreover, the facts on record reveal that the

settlement deed dated 2.6.1992 was acted upon and in the year 2007, the 1st defendant in the suit was alleged to have entered into an agreement

of sale with the plaintiff and in the year, the suit for cancellation was filed and thereafter, it is alleged that late Krupanandam executed his last will

and testament on 13.5.2008 and he died on 21.5.2008.

7. A learned single Judge of High Court of Rajasthan, in Smt. Tej Kaur and Others Vs. Jeet Singh and Others, held as under:

6. ...It is fundamental law that all the parties which are necessary in a suit must be arrayed so that the real issues between the parties can be

determined. A party will be necessary defendant if there is a right to relief against him in respect of the suit matter and his presence is necessary for

the factual and complete adjudication of all the questions involved in the suit. The question of necessary parties must be decided with reference to

the averments in the plaint and the matter in controversy. In a suit for specific performance the presence of strangers, including the co-owners or

coparceners, is not necessary inasmuch as, they are not concerned with the relief sought or the defence raised. The most important thing that

protects right of such strangers is that the judgment in such cases is not binding on them. In such suit the Court is called upon to address itself to the

relevant issues like the execution of the agreement to sell and its violation. Since such an agreement is executed between the two parties, they are

the only necessary parties and any dispute will be found existing only between them. Hence the adjudication of such issues will be binding on the

parties involved in the suit and not others including the co-owners. Hence even if such parties are excluded from being impleaded in the suit, no

prejudice is caused.

7. I may refer to the Full Bench judgment of the Madhya Pradesh High Court rendered in Panne Khushali and Another Vs. Jeewanlal Mathoo

Khatik and Another, The question referred to the Full Bench was as follows (at page 152):-""Whether in a suit for specific performance of a

contract for sale, a third person intervener, who contends that the suit property is joint property of the applicant and he is also the co-owner of that

property, would be made a party (defendant)."" After reviewing the case laws of the Madhya Pradesh High Court as well as of other Courts, the

Full Bench answered the above question in the following terms:-""Strangers to the contract making a claim adverse to the title of the defendant

(vendor) contending that they are the co-owners of the contracted property are neither necessary nor proper party and are, therefore, not entitled

to be joined as parties to the suit.

8. The Apex Court in the decision reported in Anil Kumar Singh Vs. Shivnath Mishra alias Gadasa Guru, held that in a suit for specific

performance of contract of sale of immovable property, respondent, who is not a party to the contract and who sought for impleadment on the

ground that he acquired subsequent interest as co-owner by virtue of a decree obtained from court, is not entitled to be joined as defendant under

Order 1, Rule 3 of C.P.C., as he is neither a necessary party, nor a proper party, hence need not be impleaded under Order 1 Rule 10(2) of

C.P.C. The relevant portion of the judgment is extracted as under for better appreciation:

4. Equally, Order 1, Rule 3 is not applicable to the suit for specific performance because admittedly, the respondent was not a party to the

contract. Rule 3 of Order 1 provides that:

3. Who may be joined as defendants.- All persons may be joined in one suit as defendants where-

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such

persons, whether jointly, severally or in the alternative; and

(b) if separate suits were brought against such persons, any common question of law or fact would arise.

5. In this case, since the suit is based on agreement of sale said to have been executed by Mishra, the sole defendant in the suit, the subsequent

interest said to have been acquired by the respondent by virtue of a decree of the court is not a matter arising out of or in respect of the same act

or transaction or series of acts or transactions in relation to the claim made in the suit.

6. Order 1, Rule 10(2) postulates that:

10. (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

necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit be added.

7. By operation of the above-quoted rule though the court may have power to strike out the name of a party improperly joined or add a party

either on application or without application of either party, but the condition precedent is that the court must be satisfied that the presence of the

party to be added, would be necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved

in the suit. To bring a person as party-defendant is not a substantive right but one of procedure and the court has discretion in its proper exercise.

The object of the rule is to bring on record all the persons who are parties to the dispute relating to the subject-matter so that the dispute may be

determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings.

8. 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.

9. Sub-rule (2) of Rule 10 of Order 1 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 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.

9. In view of the above judgments, it is clear that the proposed party, who is not a party to the agreement of sale, cannot be impleaded in a suit for

specific performance.

10. In the judgment relied on by the counsel for the petitioner in Sumtibai and Others Vs. Paras Finance Co. Regd. Partnership Firm Beawer

(Raj.) Thru Smt. Mankanwar Chordia (Dead) and Others, , the facts reveal that the plaintiff therein filed the suit for specific performance of

agreement of sale, against the defendant, who was the owner of the property. During the pendency of the suit, the defendant died and his wife and

sons were brought on record. Alleging that they were also co-owners along with the defendant, which fact is born from the registered sale deed,

they sought to take additional defence. That was rejected. The Apex Court held that legal representatives have right to take such defence by way

of filing additional written statement. It was further held that since the legal representatives were already on record, not allowing them to file

additional written statement would serve no purpose. In these facts and circumstances, the apex court held that in a suit for specific performance,

third party, who has fair semblance of title or interest, can certainly file an application for impleadment. In the said judgment, the Apex Court

further held that "what is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various

observations made in it. Every judgment must be governed and qualified by the particular facts of the case in which such expressions are to be

found. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

Even a single significant detail may alter the entire aspect...

11. In the present case, the settlement deed dated 2.6.1992 executed by the father of the defendant was acted upon and the defendant

constructed the house and subsequent in the year 2007 it is alleged that he entered into agreement of sale. The suit for cancellation of settlement

deed was filed in the year 2008 i.e., after a period of sixteen years and the last will was alleged to have been executed on 13.5.2008 and the

executant died on 21.5.2008. By the date of execution of last will by late Krupanandam, the suit for cancellation of settlement deed was pending

and hence on the date of execution of will, he himself has no right. Therefore, prima facie this Court is of the view that the proposed party has no

fair semblance of title to come on record in the present case. The court below rightly found that there is no semblance of title and hence the above

judgment of the Apex court cannot be made applicable to the facts of the present case in all fours.

12. For the foregoing reasons, I do not find any merit in the revision and the same is dismissed. No costs.