Shrilekha Hire Purchase Finance Ltd. Vs TCI HU Ways Pvt. Ltd. and Others

Court: Andhra Pradesh High Court

Date of Decision: March 15, 2007

Acts Referred: Andhra Pradesh Court Fees and Suits Valuation Act, 1956 â€" Section 6
Civil Practice Rules, 1990 â€" Rule 28
Civil Procedure Code, 1908 (CPC) â€" Order 1 Rule 10

Citation: (2007) 5 ALD 424 : (2007) 5 ALT 798

Hon'ble Judges: C.Y. Somayajulu, J

Bench: Single Bench

Advocate: V.V.N. Narasimham, for the Appellant; S. Niranjan Reddy, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

C.Y. Somayajulu, J.
First respondent filed the suit against respondents 2 and 3 and sought a decree for recovery of Rs. 1,12,470/- with

interest thereon from the second respondent alleging that they misappropriated the amounts belonging to it and that the third respondent repaid the

amount due from him. Subsequently, first respondent filed a petition under Order 1 Rule 10 to implead the revision petitioner as third defendant in

the suit alleging that the second respondent gave a car to be kept as security for the amount due from him till he repays the said amount, and that

the revision petitioner, in its capacity as the financer of the said car, purchased by second respondent under a hire purchase agreement with it, is

trying to interfere with the possession of the car. Though revision petitioner filed its counter contending that it is not either necessary or proper party

to the suit, the trial Court by the order under revision, allowed the petition on the premise that it is not opposed by the revision petitioner. Hence,

this revision.

2. The contention of the learned Counsel for the revision petitioner is that inasmuch as the suit is for recovery of money from respondents 2 and 3,

on the ground of their misappropriating the amount belonging to the first respondent, revision petitioner is not either a necessary or a proper party

to the suit and so it cannot be made a party to the suit merely because the car financed by it, under a hire purchase agreement to the second

respondent, is said to have been given as a security by the 2nd respondent to the first respondent. It is his contention that the revision petitioner, as

de jure owner of the said car, has a right to seize it when the amount due under the agreement is not paid, and so the trial Court was in error in

allowing the petition on a presumption that it is the revision petitioner that filed the petition to implead him as party to the suit, without keeping in

view the fact that it opposed the application to implead it as a party to the suit. The contention of the learned Counsel for the first respondent is that

since the car standing in the name of the second respondent is given as security for the amount due from the second respondent and since the

revision petitioner is trying to interfere with the possession of that car, first respondent was advised to file the petition to implead the revision

petitioner as party to obtain the relief of injunction against the revision petitioner restraining it from interfering with its possession over the said car

and in the circumstances of the case, the revision petitioner is a proper, if not a necessary party to the suit.

3. The suit is filed by the first respondent against respondents 2 and 3 for recovery of money on the ground that they misappropriated the amount

belonging to it. It is not the case of the first respondent that there is a collusion between respondents 2 and 3 and the revision petitioner in their i.e.,

respondents 2 and 3, misappropriating its amount. In that suit, revision petitioner is sought to be brought on record on the ground that the car

purchased by the second respondent with the financial assistance of the revision petitioner was given as security to it, and that the revision

petitioner is trying to interfere with its possession over the said car.

4. Now, the contention of the learned Counsel for the first respondent is that inasmuch as the first respondent wants to seek an injunction against

the revision petitioner restraining it from interfering with the possession of the car given to the first respondent by the second respondent as security

for the amount due from the second respondent the revision petitioner may be made a party to the suit. The said contention cannot be accepted for

two reasons.

(1) In a suit for recovery of amount filed by first respondent against respondents 2 and 3, question of granting an injunction against the revision

petitioner from interfering with the security given to the first respondent does not arise, because the cause of action for the relief of injunction

against the revision petitioner is different from the cause of action for recovery of money due from respondents 2 and 3. A suit for two different

reliefs based on two different causes of action would be a multifarious suit. So, as per Section 6 of A.P. Court Fees and Suits Valuation Act 1956,

Court fees has to be paid separately for the relief of injunction.

(2) As per Rule 28 of the Civil Rules of Practice, 1990, an application under Order 1 Rule 10 CPC etc., should also contain a prayer for all

consequential amendments. Neither in the affidavit filed in support of the application, nor in the petition to implead the revision petitioner as a party-

defendant to the suit, is there a prayer for injunction against the revision petitioner as a consequential relief, nor are the necessary paragraphs

containing the value of the suit for the relief of injunction claimed are mentioned therein, and there is no reference to payment of Court fee payable

on the relief of injunction also.

In view thereof question of the trial Court granting an injunction against the revision petitioner restraining it from interfering with the possession of

the first respondent over the car allegedly handed over to it i.e., first respondent by the second respondent does arise.

5. The above apart a person claiming title to the property of the defendant, which is given to the plaintiff in a simple suit for recovery of money, as

security or otherwise, is neither a necessary nor a proper party to the suit because title to the property of the defendant in a simple suit for recovery

of money will not, and cannot, be gone into. Question of title to the properties of the defendant, in a suit for recovery of money, can be gone into

only during execution proceedings initiated by the plaintiff-decree holder, when or if third party puts forth a claim to the property attached by the

plaintiff (Decree Holder). It is also well known that in a simple suit for recovery of money, the capacity of the defendant to repay the amount

claimed by the plaintiff or his assets, cannot and need not be gone into for disposal of the suit.

6. Therefore, the trial Court erred in directing the impleadment of revision petitioner as party to the suit.

7. Hence, the revision is allowed and the order under revision is set aside and LA. No. 1010 of 2003 in O.S. No. 122 of 2003 is dismissed with

costs throughout.