

THE HONOURABLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No. 1170 OF 2023

ORDER:

The plaintiffs in O.S.No.879 of 2013 on the file of the Court of the II Additional Senior Civil Judge, Vijayawada, are the petitioners in the present Revision filed under Article 227 of the Constitution of India.

2. This Revision calls in question the order dated 16.03.2023 passed by the said Court, dismissing I.A.No.317 of 2022 in O.S.No.879 of 2013. The suit is for specific performance of contract of sale and return of the amount and damages, amounting to Rs.23,00,000/- together with interest at the rate of 12% from 20.08.2017 by creating charge over the plaint schedule property. The following are the plaint schedule properties:

“A house bearing old D.No.3-57 and new D.No.3-156 and old assessment No.385 and new assessment No.536 consisting of 3 portions situated in Kankipadu village within the area of SRO Kankipadu, with following boundaries.

An extent of 222.70 Sq., Yards of house site, Madras Terrace building and ACC sheet shed consisting of 3 portions (3 shops) bearing old D.No.3-57, old assessment No.385 and, new door No.3-156 with new assessment No.556 main road, with electrical service Nos.1086 and 1096, Kankipadu village and

Mandalam, Krishna District, within the limits of SRO

Kankipadu, Krishna District is being bounded by

Item No.1

East	2 nd item joint bazaar	81 links
South	Property of Enduri Sesha Ratnamma's site	55 links
West	Some extent of eves of house of Tadikonda Naga Ratnamma, at present site of Koppu Ravuri Padvathi's site and also some vacant site	91 links
North	Vijayawada-Machilipatnam road	52 links
	Total extent of site: 222.70 Sq., yards (4601 links)	

Item No.2 Joint Bazaar

East	Some extent of house wall Kancharala Kesava Rao	185 links
South	Continuation Bazaar	12.5 links
West	1 st item some extent and site of Enduri Sesha Ratnamma, Site of Nadlya Timmaya	
North	Machilipatnam-Hyderabad Road"	

3. In the aforesaid suit, the plaintiffs-petitioners herein filed the instant I.A.No.317 of 2022 under the provisions of Order 1 Rule 10 of the Code of Civil Procedure, seeking impleadment of proposed parties as defendants 2 and 3 in the suit. The defendant-respondent No.1 and proposed parties filed their counters, resisting the said Interlocutory Application. The learned Judge, by way of the order under challenge in this Revision, dismissed the Application. Hence, the Civil Revision Petition.

4. Heard Sri Sai Gangadhar Chamarthy, learned counsel for the petitioners and Sri Taddi Nageswara Rao for the defendant-1st respondent herein.

5. It is contended by Sri Sai Gangadhar Chamarthi, learned counsel for the petitioners that the order impugned in this Revision is highly erroneous, and contrary to law and opposed to the very spirit and object of the provisions of Order 1 Rule 10 of the Code of Civil Procedure; that the presence of the proposed defendants is absolutely necessary in the suit for complete adjudication of the issues and their impleadment would avoid multiplicity of litigation in respect of the suit property; that the plaintiffs-petitioners herein, being *dominant litis*, are entitled to implead the proposed defendants, who are claiming title/interest over the subject property; that the trial Court ought to have seen that O.S.No.57 of 2019 was filed on 08.07.2019 by the proposed defendants against the respondent No.1 herein and collectively they got it advanced from 12.08.2019 to 26.07.2019 and got it disposed of by getting it referred to Lok Adalat.

6. *Per contra*, Sri Taddi Nageswara Rao, learned counsel for the defendant-first respondent contends that there is no error nor there exists any infirmity in the order passed by the learned Single Judge, as such, the impugned order warrants no interference of this Court under Article 227 of the Constitution of India. It is further contended by the learned counsel that the proposed defendants relinquished their rights over the schedule property of

O.S.No.57 of 2019, as such, they are neither proper nor necessary parties to the present suit. It is further contended that the proposed defendants have nothing to do with the present suit and that the present application is intended to drag on the proceedings.

7. In the above background, now the issues that arise for consideration of this Court in the present Revision are –

1. Whether the questioned order is sustainable and tenable in the facts and circumstances of the case?
2. Whether the impugned order warrants any interference of this Court under Article 227 of the Constitution of India?

8. The information available on record reveals that the present suit, O.S.No.879 of 2013, came to be instituted for specific performance of contract of sale against the 1st respondent and the plaintiff schedule property consists of items 1 and 2. The proposed defendants-respondents 2 and 3 herein filed O.S.No.57 of 2019 against the 1st respondent herein and 6 others on the file of the Court of the II Additional District Judge, Vijayawada and the 1st respondent herein was arrayed as 1st defendant in the said suit.

O.S.No.57 of 2019 was filed for the following reliefs:

“8. The plaintiffs, therefore, pray that the Honourable court may be pleased to pass decree and judgment in their favour against the defendants;

- a. *To decree that the plaintiffs are the absolute owners in respect of plaint schedule properties have 90% share to the 1st plaintiff and 10% share to the 2nd plaintiff.*
- b. *To grant consequential possession of the plaint schedule properties while directing the defendants to deliver vacant possession plaint schedule properties to the plaintiffs.*
- c. *To grant mesne profits from the date of suit till the date of delivery of possession of plaint schedule properties at Rs.10,00,000/- [Rupees ten lakhs only] per annum.*
- d. *To grant costs of the suit.”*

9. Item No.7 of plaint schedule in O.S.No.57 of 2019 is item No.1 of the plaint schedule in O.S.No.879 of 2013. O.S.No.57 of 2019, which was instituted on 08.07.2019, ended in settlement before *Lok Adalat* on 26.07.2019. According to the petitioners, the said transaction was a collusive transaction, as such, for effective adjudication of the issues in the present suit, the presence of respondent Nos.2 and 3 is highly essential and necessary.

10. On the other hand, the case of the 1st respondent is that the subject properties in O.S.No.57 of 2019 and the property covered by Registered Gift Deeds executed by 1st respondent in favour of respondent No.2 and 3 are different from the plaint schedule properties. It is also required to be noted that in the present I.A.No.317 of 2022 in O.S.No.879 of 2013, the proposed parties 2 and 3 filed a detailed counter. Paragraph 10 of the said court reads as follows:

“10. As per the terms of the said Lok Adalat Award, this respondents relinquished their rights over the schedule properties

of the said suit with a condition that the defendant herein shall execute a regd. Gift deed in favour of this respondents in respect of property situated in Punadipadu Village and fulfilled the same accordingly. Hence this respondents respecting the said Award passed in O.S.No.57/2019. Thus this respondents are not necessary parties to the present suit.”

11. Obviously, taking into consideration the above referred paragraph of the counter affidavit of the proposed defendants, the learned II Additional Senior Civil Judge, Vijayawada, came to a conclusion that the presence of the proposed parties in the suit is not necessary. When there is a categorical statement made by the proposed defendants, in the manner indicated supra, the order passed by the learned Judge, by any stretch of imagination, cannot be faulted.

12. Having regard to the factual situation, the judgment on which the learned counsel for the petitioners seeks to rely upon *i.e., **Kasturi Vs., Iyyamperumal and others***¹ would not render any assistance to the case of the petitioners. It is a settled and well established principle of law that unless the order impugned suffers from jurisdictional error or patent perversity, the invocation of jurisdiction of this Court under Article 227 of the Constitution of India is impermissible and such contingency is conspicuously absent in the case on hand.

¹ (2005) 6 Supreme Court cases 733

13. For the aforesaid reasons, the Civil Revision Petition is dismissed. No order as to costs.

14. As a sequel miscellaneous applications, pending, if any, shall also stand closed.

JUSTICE A.V. SESA SAI

Date : 06.09.2023
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THE HONOURABLE SRI JUSTICE A.V. SESA SAI

C.R.P. No.1170 OF 2023

Date : 06.09.2023

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