

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

**CIVIL REVISION PETITION No.1184 of 2022**

**ORDER:**

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the revision petitioners/ respondent Nos.31 and 32 in I.A.No.427 of 2021/proposed defendant Nos.37 and 38, challenging the order dated 10.03.2022 passed in I.A.No.427 of 2021 in O.S.No.149 of 2008 by the learned XI Additional District Judge (Fast Track Court), Ranga Reddy District, at Medchal, wherein the subject Interlocutory Application filed by the respondent Nos.1 to 7 herein/defendant Nos.28 to 34 under Order I Rule 10(1) CPC r/w Section 151 of CPC seeking to implead the petitioners herein/respondent Nos.31 and 32 as defendant Nos.37 and 38 in the main suit, was dismissed by the Court below.

2. Heard Sri M.S.Achyuth Bharthwaj, learned counsel for the revision petitioners/proposed defendant Nos.37 and 38, Sri P. Surya Narayana Murthy, learned counsel for the respondent No.8/plaintiff and perused the record. Notices sent to respondent Nos.1 to 7, 36 and 37 not yet returned. Respondent

Nos.9 to 35 are not necessary parties to this revision petition vide cause title.

3. The learned counsel for the revision petitioners/proposed defendant Nos.37 and 38 would contend that the proposed defendant Nos.37 and 38 were gifted an extent of Ac.1-09 gts and Ac.0-24½ gts in Sy.No.1240, situated at Shamirpet Village, under registered gift deeds bearing document Nos.4101/2016 and 4100/2016 of even date, dated 01.12.2016, by defendant No.33, who is their brother. The petitioners have substantial interest in the subject matter of the suit as the property gifted to them is part and parcel of the suit schedule property. It is further submitted that the petitioners are proper and necessary parties to the suit and if they are not brought on record, their interest would not be protected. The Court below did not properly advert to the pleadings and the submissions made in the subject I.A.No.427 of 2021 and erroneously dismissed the same. Learned counsel placed reliance over the decisions rendered in ***A.V.Murugan v. K.Maheswari and others***<sup>1</sup> and ***Krishnan Venugopal v. Antonio Joao A. Braganza***<sup>2</sup> and

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<sup>1</sup> 2020 (210) AIC 493 = MANU/TN/5155/2019

<sup>2</sup> 2013 (1) ABR 841 = MANU/MH/1543/2012

ultimately, prayed to allow the Civil Revision Petition, as prayed for.

4. On the other hand, learned counsel for the respondent No.8/plaintiff would contend that the gift deeds were brought into existence in order to protract the proceedings in the subject suit, which is of the year 2008. The defendant No.33, who is the executant of two gift deeds as well as the revision petitioners have knowledge of the pendency of the subject suit. The subject I.A was filed in the year 2021 after lapse of five years from the date of execution of two gift deeds on 01.12.2016. The revision petitioners are not proper and necessary parties to the subject suit. It is submitted that already the evidence of plaintiff side was completed and the matter is coming up for defendants evidence and it was adjourned several times for defendants evidence. No purpose would be served by impleading the revision petitioners in the subject suit. Furthermore, the subject I.A.No.427 of 2021 seeking to implead the petitioners herein as proposed defendant Nos.37 and 38 was filed by the respondent Nos.1 to 7 herein/defendant Nos.28 to 34 but not the petitioners. Since the respondent No.8/plaintiff is *dominus liti*, it is for him to choose

the parties to the suit but not the defendants. The learned counsel for the respondent No.8/plaintiff relied upon the decisions reported in ***Sarvinder Singh vs. Dalip Singh and others***<sup>3</sup> and ultimately prayed to dismiss the revision petition.

5. In view of the above submissions made by both sides, the point for determination in this revision petition is:

*“Whether the Court below is justified in passing the impugned order dated 10.03.2022 passed in I.A.No.427 of 2021 in O.S.No.149 of 2008?”*

6. **POINT**: As seen from the material placed on record, the respondent No.8/plaintiff filed the suit in O.S.No.149 of 2008 seeking declaration of title and perpetual injunction in respect of land admeasuring Ac.6-00gts in Survey No.1240, situated at Shamirpet, Medchal, Ranga Reddy District. As per the material placed on record, the subject gift deeds were executed and registered on 01.12.2016, wherein the land admeasuring Ac.1-09gts and Ac.0-24½gts in Sy.No.1240, situated at Shamirpet Village, forming part of suit schedule property, is transferred by defendant No.33 to the revision petitioners/ proposed defendant Nos.37 and 38, who are his brothers. Therefore, the defendant No.33 and the revision petitioners are

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<sup>3</sup> 1996 Supreme (SC) 1172

well aware of the pendency of the subject suit. The subject I.A. was filed belatedly in the year 2021 i.e, after lapse of five years from the date of execution of subject gift deeds. There is no explanation as to why there was delay of five years in filing the subject I.A. It is also pertinent to state that the subject I.A.No.427 of 2021 was filed by the respondent Nos.1 to 7/defendant Nos.28 to 34 but not the petitioners. The revision petitioners did not choose to file application seeking to implead them as defendant Nos.37 and 38 in the subject suit. On dismissal of the subject application (I.A.No.427 of 2021) filed by the respondent Nos.1 to 7/defendant Nos.28 to 34, the revision petitioners have come up with this revision petition. Already, the subject matter of the suit is being contested by the defendants in the suit, particularly, defendant No.33 from whom the revision petitioners are claiming title to the property in question. Furthermore, evidence of the plaintiff in the subject suit was completed and it is coming up for defendants evidence. The matter was adjourned several times for defendants evidence. It is needless to say that since the respondent No.8/plaintiff is *dominus litis*, it is for him to choose the parties to the suit but not the defendants.

7. I have gone through the decision in **A.V.Murugan's** case (1 supra) relied upon by the learned counsel for the revision petitioners. The suit therein was a suit for partition. In the said decision, the High Court of Madras (Madurai Bench) observed that it is for the plaintiff to choose a party as a defendant since he is the "*dominus litis*" and no one can force the plaintiff to add any party as a defendant in the suit and that this concept will not strictly apply in a suit for partition since in such a suit, even the defendants can be considered as plaintiffs as they are claiming shares in the property. But in the instant case, the subject suit was filed for declaration of title and perpetual injunction and hence, the said decision is not helpful to the case of the revision petitioners.

8. In **Krishnan Venugopal's** case (2 supra) cited by the learned counsel for the revision petitioners, the purchaser of the property himself filed an application seeking to implead him as party in the suit filed for declaration and permanent injunction and demolition. Here, in the instant case, the petitioners did not file an application seeking to implead them as party defendants in the suit. The defendant No.33, who executed registered gift deeds in favour of his brothers i.e, petitioners, is already on

record to take care of the interest of the revision petitioners. Moreover, the revision petitioners did not choose to file any application to implead them as defendant Nos.37 and 38. Therefore, the decision cited by the learned counsel for the petitioners is distinguishable from the facts and circumstances of the case on hand.

9. In **Sarvinder Singh's** case (3 supra) cited by the learned counsel for the respondent No.8/plaintiff, the Hon'ble Apex Court observed as follows:

*"Para 5: Section 52 of the Transfer of Property Act envisages that "during the pendency in any Court having authority within the limits of India... of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the right of any other party thereto under the decree or order which may be made therein, except under the authority of the court and on such terms as it may impose." It would, therefore, be clear that the defendants in the suit were prohibited by operation of Section 52 to deal with the property and could not transfer or otherwise deal with it in any way affecting the rights of the appellant except with the order or authority of the Court. Admittedly, the authority or order of the Court had not been obtained for alienation of those properties. Therefore, the alienation obviously would be hit by the doctrine of lis pendens by operation of Section 52. Under these circumstances, the respondents cannot be considered to be either necessary or proper parties to the suit."*

In the instant case, the defendant No.33 executed gift deeds in favour of petitioners during the pendency of the subject suit i.e., on 01.12.2016. Hence, as per Section 52 of Transfer of Property Act, the doctrine of *lis pendens* applies. The petitioners/donees

stepped into the shoes of their donor, who has been keenly contesting the suit by raising their probable defence and the petitioners are bound by the result of the suit. The Court below while dealing with the subject matter of the I.A, elaborately dealt with the contentions raised by both sides and rightly arrived at a conclusion that the revision petitioners need not be impleaded as parties to the subject suit. Under these circumstances, there is no perversity or illegality in the impugned order dated 10.03.2022 passed by the Court below. The revision petition is devoid of merits and liable to be dismissed.

**10.** Accordingly, this Civil Revision Petition is dismissed. No costs.

Miscellaneous petitions, pending if any, in this Civil Revision Petition, shall stand closed.

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**Dr. SHAMEEM AKTHER, J**

Date: 08.07.2022  
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