

M/S Sai Basava Developers Vs. Mrs K N Parvathi Alias Parvathi S P

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Court : Karnataka

Decided On : Apr-29-2015

Judge : Subhro Kamal Mukherjee

Appeal No. : WP 58841/2013

Appellant : M/S Sai Basava Developers

Respondent : Mrs K N Parvathi Alias Parvathi S P

Judgement :

R IN THE HIGH COURT OF KARNATAKA AT BENGALURU Dated this the 29th day of April, 2015 BEFORE: THE HONBLE MR JUSTICE SUBHRO KAMAL MUKHERJEE BETWEEN: Writ Petition Nos. 58841 of 2013 & 36141 of 2014 (GM-CPC) PETITIONER M/S SAI BASAVA DEVELOPERS A PARTNERSHIP FIRM OFFICE AT NO.407, 4TH MAIN ROAD OPPOSITE TO DELI, INTERMEDIATE RING ROAD AMARJYOTHI LAYOUT, WEST WING DOMLUR, BANGALORE-560071 REPRESENTED BY ITS PARTNER MR DAYANAND ... [By Sri M S Rajendra, Adv. For M/s Holla & Holla, Advocates]. AND:

1. MRS K N PARVATHI ALIAS PARVATHI S P W/O S PRASAD AGED ABOUT 65 YEARS R/A NO.3567 13TH G MAIN, 4TH CROSS HAL II STAGE, INDIRANAGAR BANGALORE-38 2. SRINIVAS S PRASAD S/O S PRASAD AGED ABOUT 37 YEARS R/A NO.3567 13TH G MAIN, 4TH CROSS 3 4. 2 HAL II STAGE, INDIRANAGAR BANGALORE-38 SMT MAMATHA RAJENDRA PRASAD

W/O SRI RAJENDRA PRASAD AGED ABOUT 42 YEARS NO.382, 7TH MAIN M S RAMAIAH CITY J P NAGAR 8TH PHASE BANGALORE-78 SMT PUSHPA VIVEK SUBBAIAH W/O VIVEK SUBBAIAH AGED ABOUT 40 YEARS NO.904, LANTANA NAHAR AMRIT SHAKTI CHANDIVALI POWAI MUMBAI-72 RESPONDENTS [By M/s Rajesh & Rajesh, Advs. for R1; Sri A M Vijay, Adv for R2 & R3]. THESE PETITIONS ARE FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE

ORDER

DATED 18.11.2013 PASSED BY THE COURT OF 42D ADDL. CITY CIVIL JUDGE IN O.S.NO.6493/2009, ALLOWING THE APPLICATIONS I.A.NOS.8 AND 10 AND BE PLEASED TO DISMISS THE SAID APPLICATIONS. AND ETC., THESE PETITIONS COMING ON FOR PRELIMINARY HEARING, B GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

By the order impugned, in a suit for specific performance of the contract, the prayer for addition of parties was allowed.

2. 3 The plaintiff instituted the suit for specific performance of the contract against the mother of the defendants, who entered into the agreement with the plaintiff.

3. The children came up with an allegation that although the property has been standing in the name of their mother, but their father in his will indicated that the entire consideration money for acquiring the property was not paid by the mother.

4. The learned judge, by the order impugned, allowed the prayer for addition.

5. Normally, third parties cannot be added as a party in a suit for specific performance of contract. The Supreme Court of India in KASTURI vs IYYAMPERUMAL [(2005) 6 SUPREME COURT CASES 733 held as under: For deciding the question who is a proper party in a suit for specific performance, the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. Thus, the question is to be decided keeping in mind the scope of the suit. The

question that is to be decided in a suit for specific performance of the contract for sale is to be enforceability of the contract entered into between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for title. Therefore, for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary at all.

6. The contention of the children is that as their mother did not fund the entire purchase money, as stated by the father in his will, they acquired title in the property on the death of father, could not be decided in this suit, inasmuch as the scope of the suit for specific performance would be enlarged. It would be practically converted into a suit for title.

7. Learned counsel for the respondents drew my attention to the decision of the Supreme Court of India 5 in SUMTIBAI vs PARAS FINANCE CO [(2007) 10 SUPREME COURT CASES⁸². It was held that it could not be laid down as an absolute proposition that whenever a suit for specific performance is filed by A against B, a third party could never be impleaded in that suit. On facts, the Supreme Court allowed the addition in that case.

8. In this case, if the persons are added, the issues involved in the suit for specific performance of the contract would be enlarged, as a simple suit would be converted into a suit for title. Moreover, the plaintiff is the dominus litis and he cannot be forced to add parties against whom he does not want to proceed in the suit, when there is no compulsion of rule of law. Where, a complete and effective relief can be obtained by a party, it is not necessary to join any other party. In a suit for specific performance of the contract for sale, a person not a party to the agreement to sell and claiming to be 6 joint owner of the subject matter of the suit is not entitled to be impleaded as a defendant.

9. Therefore, the order impugned is set aside. The application for addition of parties is rejected.

10. The trial court is required to dispose of the suit as expeditiously as possible, at any rate, within a period of not more than six months from the date of receipt of a copy of this order.

11. By way of an abundant caution, I clarify that I had no occasion to go into the question of inter se title among the defendants in the suit.

12. Writ petitions are allowed. No costs. Sd/- JUDGE *pjk

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