

G. Padmavathi Vs. G. Balraj and Another

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Court : Andhra Pradesh

Decided On : Nov-11-1998

Reported in : 1999(2)ALD77; 1999(1)ALT152

Judge : C.V.N. Sastri, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 1, Rule 10

Appeal No. : CRP No. 4832 of 1998

Appellant : G. Padmavathi

Respondent : G. Balraj and Another

Advocate for Def. : Mr. D. Jagadeeshwar Rao, Adv.

Advocate for Pet/Ap. : Mr. N. Ashok Kumar, Adv.

Judgement :

ORDER

1. This Civil Revision Petition is directed against an order rejecting the application filed by the petitioner under Order 1 Rule 10 CPC to implead the second respondent herein as a party to the suit.

2. The suit is filed by the petitioner for specific performance of an alleged oral agreement between her and the first respondent, whereby the right of pre-emption was created in favour of the petitioner in respect of the plaint schedule property. It

is the case of the petitioner that subsequently the first respondent sold away the suit property to the second respondent in violation of the alleged oral agreement. The petitioner, therefore, filed the instant application seeking to implead the 2nd respondent as a party to the suit.

3. The lower Court dismissed the application with the observation that if anybody intends to sell the property it should be in writing and the agreement conferring the right of pre-emption should also be in writing and that in case the petitioner succeeds in the suit the doctrine of lis pendens comes into force and as such there is no need to implead the 2nd respondent as a party.

4. I am afraid both the reasons given by the lower Court in its order are untenable. There is no requirement in law that an agreement of sale should only be in writing. There can also be an oral agreement. Whether the alleged oral agreement is true or not is a matter to be decided ultimately in the suit. Admittedly the second respondent has purchased the property under a registered sale-deed dated 21-11-1996 before the suit was filed. As such the doctrine of lis pendens has no application. Whether the alleged agreement of sale set up by the plaintiff is true, valid and binding on the second respondent, and whether the second respondent is a bona fide purchaser for value without notice of the alleged oral agreement, are questions which have to be decided in the suit. As a subsequent purchaser of the property the second respondent is certainly a necessary and proper party to the suit. In her absence no effective decree can be passed. It, however, appears from the record that even prior to the filing of the suit the petitioner was informed by the respondents about the sale of the property to the 2nd respondent and yet the petitioner failed to implead the second respondent in the suit initially. Considering this fact, I feel it is a fit case where the petitioner should be subjected to terms as a condition for impleading the second respondent as a party to the suit.

5. Accordingly the Civil Revision Petition is allowed and the second respondent is directed to be impleaded as a party defendant to the suit on condition that the petitioner should pay a sum of Rs. 1,000/- (Rupees one thousand only) by way of costs to the Counsel for the respondent within two weeks from to-day. In default, this order stands vacated without any need for further reference to this Court. No

costs.

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