

**IN THE HIGH COURT OF ANDHRA PRADESH**

C.R.P.No.1790, 1791, 2771 & 2900 of 2019**& C.R.P.Nos.1282 and 1293 of 2021****C.R.P.No.1790/2019**

Between:

- #1. Kurra Murali Krishna Yadav, S/o. Kurra Sambasiva Rao, R/o. D.No.2-8-32, Labour Colony, Vidyadharapuram, Vijayawada-520012 Krishna District.
2. Badveli Venkata Ramaiah, S/o. Malakondaiah, R/o. D.No.76-9-22/3, 2nd Floor, Akula Rajeswararao Mill Road, Government School Street, Swathi Theatre Backside, Bhavanipuram, Vijayawada-520012, Krishna District.
3. Donkada Nagaraju, S/o. Prasada Rao, R/o. D.No.75-11-233, Rajendran Road, Kamakoti Nagar, Bhavanipuram, Vijayawada-520012, Krishna District.
4. Bavirsetty Naga Venkata Ramalingaiah, S/o. Radha Krishna Murthy, R/o. D.No.76-17-294, Near Brahmam Gari Temple, Urmila Subbarao Nagar, Bhavanipuram, Vijayawada-520012, Krishna District.
5. Potti Naga Venkata Durga Vinod Kumar S/o. Potti Ellayya, R/o. D.No.11-8-34, Mudili Jagannadham Street, Kothapet, Vijayawada-520001, Krishna District.
6. Desu Deepthi W/o. Kothagundla Sridhar Srinivas Kumar, R/o. D.No.1-4-229/1, R.T.C. Workshop Road Bhavanipuram, Vijayawada-520012, Krishna District.
7. Chundururu Venkata Sivanarayana S/o. Chundururu Durgaiah, R/o.D.No.11-3-210, Near Rama Talkies, Macherla-522426, Guntur District.
8. Chapparapu Varalakshmi W/o. Chapparapu Yalamanda Reddy, R/o. D.No.6-1-40, Yenugulavari Street, Prizerpet, Chittinagar, Vijayawada-520001, Krishna District.
9. Rohit Jakotiya S/o. Rajendra Jakotiya, R/o. D.No.11-63-9/1, Brahmin Street, Vijayawada-520001, Krishna District.
10. Badveli Venkata Ramanaiah, S/o. Malakondaiah, R/o. D.No.9-22/3, 2nd Floor, Akula Rajeswararao Mill Road, Government School Street, Swathi Theatre Back Side, Bhavanipuram, Vijayawada-520012, Krishna District.
11. Tanneur Siva Prasada Rao, S/o. Chenchaiiah, R/o. Flat No.GF-A, Sri Sairatna Enclave, Gollapudi-521125, Vijayawada Rural Mandal, Krishna District.

... Petitioners

AND

- \$ 1. Sri Lakshmi Rama Cooperative Building Society Limited, D.No.76-13-92/11G, New Joji Nagar, Vidhyadharapuram, Vijayawada-12, rep. by its President Surakasi Venkata Srinivasa Rao, S/o. Shinna Rao, R/o. D.No.9-12-35, Kothapeta, Vijayawada, Krishna District
... Respondent/petitioner/D.Hr.
2. Abdul Majeed S/o. Shaik Ismail, R/o. Vidhyadharapuram, Vijayawada-12, Krishna District.
 3. Shaik Ismail (died)
Respondents/respondents/J.Drs.
 4. Gogulamudi Indiramma, W/o. G. Murali Krishna, R/o. Vidhyadharapuram, Vijayawada-12, Krishna District.
 5. Juddu Basaveswara Rao, S/o. Jiddu Koteswara Raio, R/o. Bhimanavari



- Street, Kothapet, Vijayawada-1, Krishna District.
6. Yalamanchili Suri Babu S/o. Yalamanchili Narayana, R/o. Dondapadu Village,-521323, Gudivada Mandal, Krishna District.
 7. Rachagunta Venkata Lakshmi W/o. R. Subba Rao, R/o. Urmila Subbarao Nagar, Vidhyadharapuram, Vijayawada-12, Krishna District
 8. Kolli Jalandhara Rao, S/o. Narayana Murthy, R/o. Bhushanagulla Village, Pedaparupudi Mandal, Krishna District.
 9. Godavari Ganga, W/o. G. Babu, R/o. 5-7/8-9D1, Near Karnati Siva Sankar (advocate), 3rd Right Side Lane, Sowmya Theatre Backside, Rajiv Sarma Nagar, Vijayawada-1, Krishna District.
 10. Chakka Purnachandra Rao, S/o. Chakka Channa Satyanarayana, R/o. D.No.1-4-208/2A, Shanmukha Sai Nilayam, Yanamandravari Street, Opp: to R.T.C. Workshop Road, Bhavanipuram, Vijayawada-520012, Krishna District.
 11. Chakka Vijayalakshmi, W/o. Chakka Purnachandra Rao, R/o. D.No.1-4-208/2A, Shanmukha Sai Nilayam, Yanamandravari Street, Opp: to R.T.C. Workshop Road, Bhavanipuram, Vijayawada-520012, Krishna District.
 12. Veeramachaneni Vijayasri, W/o. V. Srinivas, R/o. D.No.56-3-19, Ramineni Nagar, Patamata, Vijayawada-520010, Krishna District.
 13. Koneru Vijayasri, W/o. V. Srinivas, R/o. D.No.56-3-19, Ramineni Nagar, Patamata, Vijayawada-520010, Krishna District.

Respondents/respondents 3,5, 6, 7, 9, 16 to 20/
Proposed parties 3, 5, 6, 7, 9, 16 to 20

Date of Judgment pronounced on : 03.03.2022

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

1. Whether Reporters of Local newspapers
May be allowed to see the judgments? : Yes/No
2. Whether the copies of judgment may be marked
to Law Reporters/Journals: : Yes/No
3. Whether The Lordship wishes to see the fair copy
Of the Judgment? : Yes/No



***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
*HONOURABLE SRI JUSTICE R. RAGHUNANDAN RAO**

+ C.R.P.No.1790, 1791, 2771 & 2900 of 2019

& C.R.P.Nos.1282 and 1293 of 2021

% Dated:03.03.2022

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2. Abdul Majeed S/o. Shaik Ismail, R/o. Vidhyadharapuram, Vijayawada-12, Krishna District.
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Respondents/respondents 3,5, 6, 7, 9, 16 to 20/
Proposed parties 3, 5, 6, 7, 9, 16 to 20

! Counsel for Petitioners : Sri V.S.R. Anjayeyulu Sr. Counsel
representing Sri V. Satyanarayana Prasad
and Sri K.V. Bhanu Prasad

^Counsel for Respondent No.1 : T.V.P. Sai Vihari

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>HEAD NOTE:

? Cases referred:

1. AIR 2020 AP 22
2. AIR 1996 SC 3066
3. AIR 1973 AP 298
4. 2002 (2) ALD 388
5. 1954 SCR 360
6. AIR 1982 SC 818
7. AIR 1971 SC 1238
8. (2004) 1 SCC 191
9. AIR 2017 SC 3934
10. (2008) 7 SCC 144 : 2008 SCC OnLine SC 527
11. (1985) 2 ALT 428
12. (2001) 5 ALT 8
13. AIR 2003 AP 299
14. (2008) 1 ALT 47 :: (2007) 6 ALD 605
15. 1954 SCR 360 : AIR 1954 SC 75
16. 1997 SCC OnLine AP 967 : (1998) 1 ALD 497 : (1998) 1 ALT 621
17. 1999 (1) ALD 106
18. 2002 (2) ALD 388
19. (1966) 3 SCR 856 : AIR 1966 SC 1899 : (1967) 37 Comp Cas 42,



HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

C.R.P.No.1790, 1791, 2771 & 2900 of 2019

& C.R.P.Nos.1282 and 1293 of 2021

COMMON ORDER:

Since all these civil revision petitions are essentially arising between the same parties, they are being disposed of by this common order.

2. Sri Lakshmi Rama Cooperative Building Society Limited (hereinafter referred to as the 'decree holder') had filed O.S.No.66 of 1984 and O.S.No.132 of 1984 against Sri Shaik Ismail (deceased) and his son Sri Abdul Mazid, (hereinafter referred to as 'Judgment Debtors 1 and 2) for specific performance of agreements of sale. Both these suits were disposed of on 19.08.1995, with certain directions, essentially decreeing the suit for specific performance.

3. The Judgment Debtors 1 and 2 filed A.S.No.2043 of 1995 against the judgment and decree in O.S.No.132 of 1984 and A.S.No.478 of 1996 against the judgment in O.S.No.66 of 1984. Both these appeals, filed before the erstwhile High Court of A.P., were dismissed on 03.06.2013. Appeals to the Hon'ble Supreme Court against these orders have also been dismissed.

4. As one of the directions given by the trial Court was for obtaining necessary permissions from the Urban Land Ceiling authorities for completion of the sale proceedings of the suit schedule properties, the decree holder had filed E.P.No.21 of 2002 in O.S.No.132 of 1984 and E.P.No.22 of 2002 in O.S.No.66 of 1984 for appointment of a receiver to obtain necessary permissions for sale of the property. The receiver gave a report on 06.06.2013 stating that the judgment debtors had been declared as non-surplus holders under the Urban land Ceiling Act.



Thereafter, the decree holder filed E.P.No.78 of 2013 in O.S.No.66 of 1984 and E.P.No.77 of 2013 in O.S.No.132 of 1984 for execution of the said decrees.

5. The decree holder filed E.A.No.208 of 2017 in E.P.No.78 of 2013 and E.A.No.209 of 2017 in E.P.No.77 of 2013 to implead 25 persons in E.A.No.208 of 2017 and 21 persons in E.A.No.209 of 2017 as parties in the execution proceedings.

6. The case of the decree holder in both these applications was that during the pendency of the appeals before the Hon'ble High Court, the judgment debtor 1 had already been declared as non-surplus holder and suppressing that fact, the judgment debtors had plotted the lands involved in both the suits and appeals and sold it to various persons. The decree holder contended that all the sales executed by the judgment debtors were subject to the principle of *lis pendens*, contained in Section 52 of the Transfer of Property Act, and that, the persons sought to be impleaded in both the execution petitions, were the persons who were presently holding title to the land by virtue of the sales effected by the judgment debtors and in some cases, persons who had purchased lands from the judgment debtors (hereinafter referred to, collectively, as 'purchasers').

7. These applications were contested by the purchasers, on various grounds including the question of whether the decree holder could implead these purchasers, when the decree holder had kept quiet while the land was being sold and the purchasers had constructed houses and were residing in the land. The purchasers contend that they are bona fide purchasers without notice of the litigation and as such the principles of Section 52 of the Transfer of Property Act would not apply. However, the



Executing Court after considering the arguments of both sides allowed the applications impleading the purchasers as parties to the execution petitions.

8. Aggrieved by the said orders, the purchasers have filed the following civil revision petitions.

C.R.P.No.	E.A.No. & E.P.No.	Array of petitioners in E.A.
C.R.P.No.1790/2019	E.A.No.209/2017 E.P.No.77/2013	Respondents 4,8, 10 to 15, 21 to 23
C.R.P.No.1791/2019	E.A.No.208/2017 E.P.No.77/2013	Respondents 10 to 13, 17, 20, 22, 24 to 26.
C.R.P.No.2771/2019	E.A.No.209/2017 E.P.No.77/2013	Respondents 5, 17 to 20
C.R.P.No.2900/2019	E.A.No.208/2017 E.P.No.77/2013	Respondents 3 to 5, 9, 14 to 16, 23, 27.

9. This Court, by way of interlocutory orders, had stayed all further proceedings in the execution petitions, by an order dated 13.12.2019. Thereafter, the decree holder had approached the trial Court and sought pronouncement of orders in the execution petition relying on the judgment of the Hon'ble Supreme Court in AIR 2018 SC 2039. The contention of the decree holder was that, the stay granted would automatically stand vacated after a lapse of six months if the stay is not extended by way of a speaking order. This request of the decree holder was rejected by the trial Court holding that the said judgment of the Hon'ble Supreme Court would be applicable only in the case of pending suits and would not apply to execution proceedings. The Executing Court relied upon a judgment of this Court in **K. Ranga Prasad Varma vs. Kotikalapudi Sitarama Murthy**¹. Aggrieved by the said orders, the decree holder has filed C.R.P.No.1293 of 2021 and C.R.P.No.1282 of

¹ AIR 2020 AP 22



2021. Since these two CRPs are essentially applications for hearing the execution petitions, which have been stalled on account of the pendency of the other C.R.Ps mentioned above, the disposal of the first four CRPs would automatically result in closure of both these civil revision petitions.

10. Heard Sri V.S.R. Anjaneyulu, learned Senior Counsel appearing for Sri V. Satyanarana Prasad, learned counsel for the petitioners in C.R.P.Nos.2900 and 2771 of 2019; Sri K.V. Bhanu Prasad, learned counsel appearing for the petitioners in C.R.P.Nos.1790 and 1791 of 2019 and Sri T.V.P. Sai Vihari, learned counsel appearing for the decree holder in all these Civil revision petitions.

11. Sri K.V. Bhanu Prasad, learned counsel appearing for the purchasers, had contended that the implead petitions filed against the purchasers are not maintainable as the provisions of Order I Rule 10 would be applicable only to pending suits and the said provisions are not applicable to Execution Petitions. He relied upon the judgment of the Hon'ble Supreme Court in **Ramesh Singh vs. State Of Haryana**² and the judgements of the erstwhile High Court of A.P., in **Mir Sardar Ali Khan and others vs. Special Deputy Collector, Land Acquisition (Industries), Hyderabad, and others**³ and **Vaggu Agamaiah and others vs. South Central Railway, Secunderabad and another**⁴.

12. Sri V.S.R. Anjaneyulu, learned Senior Counsel appearing for some of the other purchasers, relied upon the judgments cited by Sri K.V. Bhanu Prasad. He has also raised various other issues, which are as follows:

- a) The character of the land has changed from that of open agricultural land to plotted area in which houses have been

² AIR 1996 SC 3066

³ AIR 1973 AP 298

⁴ 2002 (2) ALD 388



constructed. In the circumstances, the earlier decree is not executable.

- b) The decree holder has its office near the suit schedule lands and the decree holder was fully aware of the various sale transactions which were being executed by judgment debtors 1 and 2 and the constructions having carried out on the land by the purchasers. Having kept quiet about the said developments over a period of 15 to 20 years, the decree holder cannot implead the purchasers.
- c) The purchasers are innocent purchasers who did not have knowledge of the litigation over the said land and as such they have to be treated as bona fide purchasers whose title is not affected by the principle of *lis pendens*.
- d) The judgment relied upon by Sri T.V.P. Sai Vihari in AIR 1982 SC 818 would not be applicable in the present case as the said judgment relates to an issue arising in a suit for specific performance and whether relief of the delivery of possession can be claimed in the said suit. That issue does not arise here as the question is one of jurisdiction of the Court to invoke Order I Rule 10 C.P.C., in an execution petition.
- e) The purchasers have a valuable right under Order XXI Rule 97 and 101 wherein they would be able to make an independent claim over the property and as third parties whereas that valuable right is being taken away by the Executing Court by impleading the purchasers. He submits that once they have become parties to the execution petition, they would not be entitled to invoke the provisions of Order XXI Rule 97 and 101 C.P.C. he further submits that this would result in the purchasers being unable to demonstrate their title over the property in a duly constituted enquiry which would include a proper trial of all these issues.

13. Sri T.V.P. Sai Vihari, the learned Counsel appearing for the decree holder submits that the purchasers can be included in the array of parties, in view of the judgements of the Hon'ble Supreme Court in **Lala**



Durga Prasad v. Lala Deep Chand⁵; **Babu Lal v. Hazari Lal Kishori Lal & Ors.**,⁶; **R.C. Chandiok v. Chuni Lal Sabharwal**⁷; **Bibi Zubaida Khatoon vs. Nabi Hassan Saheb and Anr.**,⁸ **B. Vijaya Bharathi vs. P. Savitri and Ors.**,⁹.

Consideration of the Court:

14. Sri V.S.R. Anjaneyulu has raised various grounds on the merits of the claim of the decree holder and the defences available to the purchasers. These issues are not being dealt with, as the scope of enquiry, in this revision, is restricted to the question of whether the purchasers can be impleaded in the execution proceedings.

15. The contentions of the purchasers, which require to be considered, are twofold. Firstly, impleading the purchasers would take away their right to file applications and objections under Order 21 Rule 97 and 101 of C.P.C., and such, a course of action is not permissible. Secondly, the provisions of Order I Rule 10 C.P.C., are not available or applicable to execution proceedings. As such the purchasers cannot be impleaded in the execution proceedings.

16. The contention of the decree holder is that the Hon'ble Supreme Court in the judgments cited above, had held that wherever there is *pendente lite* alienation of property, the proper course for the Courts would be to direct both the original vendor and the subsequent purchasers to be made party to the sale deed that has to be executed in favour of a successful plaintiff in a suit for specific performance. As such,

⁵ 1954 SCR 360

⁶ AIR 1982 SC 818

⁷ AIR 1971 SC 1238

⁸ (2004) 1 SCC 191

⁹ AIR 2017 SC 3934



the purchasers herein, who were *pendente lite* purchasers, have to be impleaded.

17. Rules 97 and 101 of Order XXI of C.P.C., provide an opportunity to the third parties, to raise objections to the execution of a decree. However, Rule 102 of Order XXI specifically provides that the provisions of Rule 98 and 100 shall not apply in case of *pendente lite* transfers and the purchasers cannot seek any relief under these provisions. The Hon'ble Supreme court in **Usha Sinha v. Dina Ram**¹⁰, at page 149 considered this issue and held as follows:

17. Rule 102 clarifies that Rules 98 and 100 of Order 21 of the Code do not apply to transferee *pendente lite*. That Rule is relevant and may be quoted in extenso:

"102. Rules not applicable to transferee *pendente lite*.—Nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person."

Bare reading of the Rule makes it clear that it is based on justice, equity and good conscience. A transferee from a judgment-debtor is presumed to be aware of the proceedings before a court of law. He should be careful before he purchases the property which is the subject-matter of litigation. It recognises the doctrine of *lis pendens* recognised by Section 52 of the Transfer of Property Act, 1882.....

Rule 102 of Order 21 of the Code thus takes into account the ground reality and refuses to extend helping hand to purchasers of property in respect of which litigation is pending. If unfair, inequitable or undeserved protection is afforded to a transferee *pendente lite*, a decree-holder will never be able to realise the fruits of his decree. Every time the decree-holder seeks a direction from a court to execute the decree, the judgment-debtor or his transferee will transfer the property and the new transferee will offer resistance or cause

¹⁰ (2008) 7 SCC 144 : 2008 SCC OnLine SC 527



obstruction. To avoid such a situation, the Rule has been enacted.

24. In *Silverline Forum (P) Ltd. v. Rajiv Trust* [(1998) 3 SCC 723] this Court held that where the resistance is caused or obstruction is offered by a transferee pendente lite, the scope of adjudication is confined to a question whether he was a transferee during the pendency of a suit in which the decree was passed. Once the finding is in the affirmative, the executing court must hold that he had no right to resist or obstruct and such person cannot seek protection from the executing court. The Court stated : (SCC pp. 727-28, para 10)

“10. It is true that Rule 99 of Order 21 is not available to any person until he is dispossessed of immovable property by the decree-holder. Rule 101 stipulates that all questions ‘arising between the parties to a proceeding on an application under Rule 97 or Rule 99’ shall be determined by the executing court, if such questions are ‘relevant to the adjudication of the application’. A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. No doubt if the resistance was made by a transferee pendente lite of the judgment-debtor, the scope of the adjudication would be shrunk to the limited question whether he is such a transferee and on a finding in the affirmative regarding that point the execution court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of Property Act.”

(emphasis supplied)

(See also *Sarvinder Singh v. Dalip Singh* [(1996) 5 SCC 539] .)

18. The same principle has been reiterated, independently, by the erstwhile high court of Andhra Pradesh in **J.P. Shankar Singh and anr., vs. Pacha Bee and ors.**¹¹, **Kadali Pullayya vs. Kadali**

¹¹ (1985) 2 ALT 428



Pullayya¹², Muppidi Dora Reddy vs. Bollareddy Ramakrishna Reddy and ors.,¹³ and Veerabathini Janardhan vs. Terla Rajaiah (since Died) per LRs. & Ors.,¹⁴. These provisions are not available to the purchasers and no claim of being shut out of any relief can be made. Accordingly, the first contention of the purchasers would have to be rejected.

19. Before going into the question of whether pendente lite purchasers can be impleaded in execution proceedings, it would be apt to consider whether they are required to be joined as parties in execution proceedings. The Hon'ble Supreme considered the question of such a necessity in suits relating to specific performance of agreements. The leading judgement on this issue is **Lala Durga Prasad v. Lala Deep Chand¹⁵**.

20. The relevant observations of the Hon'ble Supreme court are:

37. The practice of the courts in India has not been uniform and three distinct lines of thought emerge. (We are of course confining our attention to a *purchaser's* suit for specific performance). According to one point of view, the proper form of decree is to declare the subsequent purchase void as against the plaintiff and direct conveyance by the vendor alone. A second considers that both vendor and vendee should join, while a third would limit execution of the conveyance to the subsequent purchaser alone.

.....

42. In our opinion, the proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join

¹² (2001) 5 ALT 8

¹³ AIR 2003 AP 299

¹⁴ (2008) 1 ALT 47 :: (2007) 6 ALD 605

¹⁵ 1954 SCR 360 : AIR 1954 SC 75



in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff. This was the course followed by the Calcutta High Court in *Kafiladdin v. Samiraddin* [AIR 1931 Cal 67] and appears to be the English practice. See *Fry on Specific Performance*, 6th Edn., p. 90, para 207; also *Potter v. Sanders* [67 ER 1057]. We direct accordingly.

21. This judgement has been followed by the Hon'ble Supreme Court in the case of **Babu Lal vs. Hazarilal Kishori Lal and Ors.** These judgements affirm the principle that the best course, for a proper conclusion to a suit for specific performance, is to ensure that all subsequent purchasers, who can claim title through the vendor, should be made a party to the deed of conveyance. However, in both these cases, the subsequent purchasers were party to the suit itself and the observations set out above were made in the appeal proceedings. Though these judgements have required the subsequent purchasers also to be impleaded, the question of whether they can be impleaded at the stage of execution proceedings was not answered. In **R.C. Chandiok vs. Chuni Lal Sabharwal**, the Hon'ble Supreme Court was considering the same question in a case where the subsequent purchaser was not a party to the suit proceedings. In this case, the suit for specific performance of agreement reached the Hon'ble Supreme Court on an appeal by the plaintiff/purchaser. After holding in favour of the plaintiff/purchaser, the Hon'ble Supreme Court took note of the fact that the seller had alienated the property in question, during the pendency of the proceedings and issued further directions in the following manner:

9. It is common ground that the plot in dispute has been transferred by the respondents and therefore the proper form of the decree would be the same as indicated



at p. 369 in *Lala Durga Prasad v. Lala Deep Chand* [(1954) SCR 360 : AIR 1954 SC 75] viz. "to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff." We order accordingly. The decree of the courts below is hereby set aside and the appeal is allowed with costs in this court and the High Court.

22. These observations of the Hon'ble Supreme Court would require the subsequent purchasers to be impleaded in the execution proceedings, to effectuate the directions of the Hon'ble Supreme Court.

23. In **Mir Sardar Ali Khan and others vs. Special Deputy Collector, Land Acquisition (Industries), Hyderabad and ors.**, (3 supra), the question of whether third parties to the suit and subsequent appeals could be impleaded in the execution proceedings was raised. This was answered in the negative. In **Chaganti Lakshmi Rajyan v. Kolla Rama Rao**¹⁶, at page 499 a division bench of the erstwhile High Court of Andhra Pradesh, following the aforesaid judgement held as follows:

11. The next question is whether Order 1, Rule 10 has application to the proceedings other than suits and appeals. A Division Bench of this Court in *Sardar Ali Khan v. S. Deputy Collector*, 1993 (2) ALT 155 observed as follows:

"The scope and application of Order 1, Rule 10(2) CPC is to add parties, necessary or proper, to enable the Court, to effectually and completely adjudicate all the questions that are involved in a case. The use of the words "at any stage of the

¹⁶ 1997 SCC OnLine AP 967 : (1998) 1 ALD 497 : (1998) 1 ALT 621



proceeding” in sub-rule (2) of Rule 10 in Order 1 manifests that the power vested in the Court under that provision can be exercised only when the proceedings before it are alive and still pending. In other words, the application of Order 1, Rule 10(2) should be confined only to cases where any proceedings are pending before the Court. The very purpose and object of this provision being to make any party a defendant or respondent or plaintiff or appellant in a proceeding, in order to enable the Court to make an effective and complete adjudication itself of all the disputes in the case is over, this provision cannot be made use of by any party.”

12. The Division Bench in order to come to the said conclusion, relied on a decision reported in *Lingammal v. Chinna Venkatammal* (ILR 6 Madras 237). Therefore, we have no hesitation to hold that an application to implead as parties to the execution petition is not maintainable after the disposal of the suit.

(NOTE- The citation of “Sardar Ali Khan” is incorrect and the correct citation is AIR 1973 298)

24. These judgements were followed in **Vaddi Govinda Rajulu (died) and Ors., vs. Kaspas Venkata Ramanamurthy and Ors.**¹⁷ and **Vaggu Agamaiah and Ors., vs. South Central Railway, Secunderabad and Anr.**,¹⁸ holding that third parties to the suit or subsequent appeals cannot be impleaded as parties to execution proceedings, under Order I, Rule 10 C.P.C.

25. Apart from the above judgements. Sri K.V. Bhanu Prasad, had also cited the judgement of the Hon’ble Supreme Court in **Ramesh**

¹⁷ 1999 (1) ALD 106

¹⁸ 2002 (2) ALD 388



Singh vs. State Of Haryana (2 supra). In that case, the lands of the 1st appellant had been acquired along with the lands of other persons. The 1st Appellant being aggrieved by the quantum of compensation awarded by the acquisition officer had sought reference to the district court. The 1st appellant was unsuccessful in the reference. However, another person, whose lands had also been acquired was able to get an enhancement of compensation and filed an execution petition for recovery. The legal heirs of the 1st Appellant sought to implead themselves in the execution petition and sought a direction from the executing court to award the enhanced compensation to them also. This request was accepted by the executing court and reversed by the High Court. The Hon'ble Supreme Court, on appeal, framed the following question:

"The question then is whether the execution court which passed the award in the case of *Rumal Singh* had jurisdiction to implead the non-parties to the award and make the award in their favour."

26. This question was answered by the Hon'ble Supreme Court by holding that, the execution court does not have jurisdiction to go behind the decree either to implead third parties or to pass an independent award in favour of third parties. The Hon'ble Supreme Court, in paragraph 4 of the said judgement, held as follows:

"Besides the decree, the execution court is devoid of jurisdiction and power to go behind the decree either to implead third parties to it who are not persons claiming right, title and interest in the decree through the decree-holder nor does it have power to pass an independent award and decree under Section 26 in favour of the third parties. The civil court gets jurisdiction to award compensation higher than the compensation made under Section 11 in respect of the acquired land only on reference under Section 18. It is not an ordinary civil court



under Section 9 of the Civil Procedure Code but a court constituted for the purpose of deciding the compensation for the acquired land under the Act on reference to an established court” .

27. As can be seen from the above passage, the said judgement has been delivered on the basis of the provisions of the Land Acquisition Act, 1894. The observations of the Hon'ble Supreme court were made in the context of an award being altered in an execution proceeding. The observation about the impleadment of persons, claiming through the decree holder being permissible, would show that the Hon'ble Supreme Court had not placed an absolute bar on other persons being impleaded in execution proceedings. The Judgements referred to, earlier, in relation to suits filed for specific performance of agreements of sale, require the subsequent purchasers to be included in the deeds of sale and the same would be possible only upon such subsequent purchasers being impleaded as parties to the execution proceedings. In these circumstances, the general observations of the Hon'ble Supreme Court, in the judgement cited by Sri K.V. Bhanu Prasad, would not apply to the peculiar facts of the present case.

28. We are now faced with a dichotomy. The Hon'ble Supreme Court had taken the view that in suits for specific performance, the correct course of action is to join the subsequent purchasers also in the sale deeds that need to be executed. In **R.C. Chandiok vs. Chuni Lal Sabharwal**, (7 supra) the Hon'ble Supreme Court had specifically directed this course of action even where the subsequent purchasers were not parties to the suit. On the other hand, the provisions of Order I, Rule 10, as interpreted by this court, do not lend themselves to impleading subsequent purchasers. At this stage, one significant aspect of these



judgements has to be noticed. In all these judgements, the court did not take the view that Order I, Rule 10, prohibits or bars the impleading of third parties in an execution petition. The view taken is that, the applications under Order I, Rule 10, are not maintainable in execution proceedings as the language of this provision restricts the application of this provision to live suits and pending matters. To put it in another way, the ratio is that the provisions of Order I, Rule 10 are not applicable to implead petitions in Execution Petitions. Therefore there is no provision, in the Civil Procedure Code, governing the procedure for impleading subsequent purchasers at the stage of execution proceedings.

29. In such an event, the inherent powers of the court, under section 151 of C.P.C., can always be invoked. The Hon'ble Supreme Court, while considering the scope and ambit of section 151 of C.P.C. in **Ram Chand and Sons Sugar Mills (P) Ltd. v. Kanhayalal Bhargava**¹⁹, in paragraph 5, held as follows:

Having regard to the said decisions, the scope of the inherent power of a court under Section 151 of the Code may be defined thus: The inherent power of a court is in addition to and complementary to the powers expressly conferred under the Code. But that power will not be exercised if its exercise is inconsistent with, or comes into conflict with, any of the powers expressly or by necessary implication conferred by the other provisions of the Code. If there are express provisions exhaustively covering a particular topic, they give rise to a necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed by the said provisions. Whatever limitations are imposed by construction on the provisions of Section 151 of the Code, they do not control the undoubted power of the Court conferred under Section 151 of the Code to make a

¹⁹ (1966) 3 SCR 856 : AIR 1966 SC 1899 : (1967) 37 Comp Cas 42,



suitable order to prevent the abuse of the process of the Court.

30. The presence of the purchasers in the sale deeds is essential to the completion of the process and in the absence of any specific provision for impleading the purchasers, the decree holder can always rely upon the provisions of section 151 and seek invocation of the inherent power of the court to do justice.

31. For the aforesaid reasons, the orders, impleading the purchasers, would have to be upheld and C.R.P.Nos.1790, 1791, 2771, and 2900 of 2019 are dismissed. In view of the dismissal of these Revision petitions, C.R.P.Nos.1282 of 2021 and 1293 of 2021 are closed.

32. The contentions raised by the purchasers relating to the merits of their case and the defences raised by them, against the execution of the decree, as may be permissible, are left open for adjudication.

There shall be no order as to costs. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

3rd March, 2022
Js.

R. RAGHUNANDAN RAO, J.



HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

C.R.P.No.1790, 1791, 2771 & 2900 of 2019

And C.R.P.Nos.1282 and 1293 of 2021

3rd March, 2021

Js.