

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
CIVIL REVISION PETITION No.4371 of 2013

ORDER :

This Revision is filed challenging the order dated 30-08-2013 in I.A.No.198 of 2013 in O.S.No.374 of 2013 of the VI Junior Civil Judge, City Civil Court, Hyderabad. The petitioners herein are third parties to the suit.

The 1st respondent herein filed the said suit against the 2nd respondent for an injunction restraining the 2nd respondent from interfering with construction work or demolition in part of the suit schedule property either in whole or in part.

The petitioners herein had infact filed O.S.No.1779 of 2012 on the file of XIX Junior Civil Judge, City Civil Court, Hyderabad against the 1st respondent herein and vendors of the 1st respondent seeking perpetual injunction against them in respect of an extent of Ac.19-00 guntas of land, which according to the petitioners includes the premises which is the subject matter of O.S.No.374 of 2013. It was decreed after contest.

They filed I.A.198 of 2013 under Order I Rule-10 C.P.C. to implead them in O.S.No.374 of 2013. They contended that they are the owners and possessors of an extent of Ac.01-25 guntas in old Survey No.29 and 32 of Teegalguda Village, Charminar Mandal, Hyderabad corresponding to Survey No.182B/16/1 (new); that out of this extent Ac.01-25 guntas, Ac.0-19 guntas (which includes the property, which is the subject matter of O.S.No.374 of 2013) was in dispute in O.S.No.1779 of 2012 before the XIX Junior Civil Judge, Hyderabad; in I.A.No.462 of 2012 in O.S.No.1779 of 2012, interim injunction was granted after contest; and thereafter the present suit had been filed by the 1st respondent against the 2nd respondent without impleading the petitioners, inorder to get some interim orders behind back of the petitioners, and to start interfering with the possession and enjoyment of the petitioners over the plaint schedule property. They claimed that the 1st respondent managed to obtain permission to make construction in the subject property; on coming to know of it, they applied to the 2nd respondent to cancel the said permission on 05-06-2012, and at that stage, suit had been filed. They contended that inorder to deprive them of their legitimate right over the suit schedule property, present suit is filed without impleading them.

Counter affidavit was filed by the 1st respondent opposing the impleadment of the petitioners. He contended that suit being one for bare injunction, even if it is decreed or dismissed, it cannot be executed against the petitioners and the petitioners had not explained how their presence is required in the suit. He also contended that he did not seek any relief against the petitioners and therefore, they ought not to be impleaded.

By order dated 30-08-2013, the Court below dismissed the said application. It held that relief claimed in the suit O.S.No.374 of 2013 is only for perpetual Injunction against the 2nd respondent, such a relief is only in '*personam*' and not in '*rem*' and that the petitioners did not file any documents to prove title over the schedule property. It held that the petitioners were seeking

same relief against the 1st respondent in O.S.No.1779 of 2012 on the file XIX Junior Civil Judge, City Civil Court, Hyderabad and so they are not proper and necessary parties to the suit.

Challenging the same, this Revision is filed.

Counsel for the petitioner contended that the Court below erred in refusing to implead the petitioners in suit O.S.No.374 of 2013 filed by the 1st respondent against the 2nd respondent. The petitioners had filed O.S.No.1779 of 2012 against the 1st respondent and vendors of the 1st respondent before XIX Junior Civil Judge, City Civil Court, Hyderabad for perpetual injunction restraining the 1st respondent and other defendants in the suit from interfering with the petitioners peaceful possession and enjoyment thereof; the property which is the subject matter of O.S.No.374 of 2013 is forming part of the property in O.S.No.1779 of 2012; although the suit O.S.No.1779 of 2012 was pending, when I.A.No.198 of 2013 was being considered by the Court below, it has since been decreed on 19-12-2014; since the subject matter of both suits was the same property; they ought to have been impleaded by the Court below.

Although notices were sent to the respondents 1 and 2 and they were received, there is no representation on their behalf.

Order 1 Rule-10 C.P.C. confers discretion on the Court to add parties at any stage of the proceedings, so as to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit.

No doubt, relief of injunction is *in personam* against person and those who claims through him and not binding on third parties.

However law permits to add a party defendant, even if no relief may be claimed against him provided his presence is necessary for complete adjudication on the controversy.

In a judgment of ***Ramesh Hiranand Kundanmal v.Municipal Corporation of Greater Bom***
“*if the intervener has a cause of action against the plaintiff relating to the subject-matter of the existing*

In ***Anil Kumar Singh v. Shivnath Mishra and Gadasa Guru***^[2] and ***Ramesh Hiranand*** (s

Having regard to the legal position, I am of the opinion that the Court below erred in refusing

In my opinion, the presence of petitioners would enable the Court below to decide whether t

The Civil Revision Petition is accordingly allowed and the order dated 30-08-2013 in I.A.No. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

31-08-2015
nvl

^[1] 1992 SCC (2) 524,

^[2] 1995 SCC (3) 147