THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition Nos.1109 AND 1110 of 2014

COMMON ORDER:

Since these two Civil Revision Petitions arise between the same parties and out of the same suit, they are being disposed of by this common order.

2. The petitioner in both these Revisions is a third party to the suit OS.No.1273 of 2013 on the file of the VI Junior Civil Judge, City Civil Court, Hyderabad.

3. The said suit was filed by the 1st respondent against the 2nd respondent for a perpetual injunction restraining the officials of the 2nd respondent from interfering in any manner or demolishing the suit schedule property belonging to the 1st respondent.

4. In the plaint, the 1st respondent contended that the subject property is more than 40 years old and needed some repairs and for that no prior permission required under Building bye-laws of Greater Hyderabad Municipal Corporation Act, 1955 (for short 'the Act'); that while he was in the process of carrying out certain repairs, the officials of the 2nd respondent attempted to demolish the said structures without issuing any notice and without assigning any reasons; and so he filed the suit.

5. The 1st respondent also filed I.A.No.433 of 2013 in the said suit seeking a temporary injunction against the 2nd respondent retraining the 2nd respondent officials from interfering and demolishing the structures in the suit schedule property.

6. Admittedly, the petitioner herein, who is the owner of the property bearing No.20-2-434/1 and neighbour of the 1st respondent, had filed complaint dt.22.04.2013 with the 2nd respondent alleging that the 1st respondent is carrying on illegal and unauthorized construction by encroaching the footpath. When the said application/ complaint was not being disposed of, she filed W.P.No.13224 of 2013 to take action against the 1st respondent and in WPMP.No.16241 of 2013, on 16.06.2013 this Court granted an interim direction to the 2nd respondent officials to consider the said complaint and take appropriate action in accordance with law after issuing notice to the 1st respondent and his family members.

7. Admittedly, the petitioner had earlier filed O.S.No.1021 of 2012 on the file of the IV Junior Civil Judge, City Civil Court, Hyderabad against the respondents and others but did not press the suit in view of the pendency of W.P.No.13224 of 2013 before this Court.

8. However, the petitioner filed I.A.No.780 of 2013 in I.A.No.433 of 2013 in OS.No.1273 of 2013 and I.A.No.781 of 2013 in O.S.No.1273 of 2013 under Order I Rule 10 CPC to implead her as a respondent in the IA and as a defendant in the suit. It is specifically alleged by the petitioner that the officials of the 2nd respondent are hand in glove with the 1st respondent and it failed to take any action against the illegal and unauthorized constructions being carried on by the 1st respondent. It is specifically contended that the 1st respondent, with a malafide intention and ulterior motive, in spite of having knowledge of filing of the W.P.No.13224 of 2013, did not implead her as a party in the suit and obtained certain interim orders by thus playing fraud.

9. Counter affidavit was filed by the 1st respondent to these two applications opposing the impleadment of the petitioner and pointing out that the petitioner had already filed W.P.No.13224 of 2013 and had withdrawn O.S.No.1021 of 2013. Other contentions on merits were also raised *inter alia* contending that the petitioner is not entitled to make any complaint against the 1st respondent or his property.

10. Before the Court below, the petitioner marked Exs.P1 to P11 and the 1st respondent marked Exs,R1 to R6.

11. By common order dt.26.03.2014, the Court below dismissed both the applications. It noted that the petitioner is claiming title through one Syed Farhat Ali Hussain, but this was disputed in the counter filed by the 1st respondent; that 1st respondent contended that petitioner had no right on the open land situated on the eastern side of the suit schedule property and therefore, cannot complain that his rights are affected. It held that since the petitioner was agitating her right in W.P.No.13224 of 2013 before this Court, she cannot get impleaded and seek a same relief against the 1st respondent.

12. Challenging the same, these two Revisions are filed.

13. Heard Sri Mir Masood Khan, counsel for the petitioner and Sri Raja Gopallavan Tayi, counsel for the 1st respondent.

14. Counsel for the petitioner contended that the orders passed by the Court below are perverse and unsustainable; that mere fact of the petitioner had filed WP.No.13224 of 2013 and withdrew OS.No.1021 of 2013, does not bar the petitioner from getting impleaded in OS.No.1273 of 2013 or in I.A.No.433 of 2013 therein; getting

impleaded as a defendant in a suit filed by the 1st respondent cannot be said to be seeking relief against the 1st respondent; it is the petitioner who highlighted the illegality of the construction being carried out by the 1st respondent, and had also made a specific allegation that the officials of the 2nd respondent are acting in collusion with the 1st respondent; and that if the petitioner is not allowed to come on record, there is every possibility of a collusive decree being obtained by the 1st respondent.

15. Counsel for the 1st respondent however contended that the orders passed by the Court below are correct and that the 1st respondent had not made out any case for impleadment. He further contended that the said applications if entertained and allowed, would permit persons totally unconnected with the property to get impleaded in the suit; that the petitioner having already filed W.P.No.13224 of 2013, the only remedy available to her is to pursue the said writ petition and that the petitioner cannot seek to get impleaded in the suit and in the I.A. therein.

16. The case of the petitioner is that she is the owner of the property bearing No. 20-2-434/1 situated at Fathema Colony Hussaini Alam, Hyderabad; the 1st respondent is her neighbour on the western side of the said property and he is carrying on illegal and unauthorized constructions therein; that she had made a complaint on 22.04.2013 to the 2nd respondent and since the same was not considered, she had filed W.P.No.13224 of 2013 in this court. She alleged that the officials of the 2nd respondent colluded with the 1st respondent and he got certain interim orders by playing fraud and therefore her presence is necessary for effectively adjudicating the issue in the suit.

17. Although the 1st respondent has disputed the title of the petitioner to the property claimed to be owned by her, it is not disputed that it was the petitioner, who lodged a complaint against the construction being made by the 1st respondent to the 2nd respondent and approached this Court by impleading both respondents in W.P.No.13224 of 2013. In this view of the matter, the 1st respondent himself ought to have impleaded the petitioner in the suit and in the I.A. therein. He cannot seek to obtain any order behind the back of the petitioner. The petitioner would be affected by any such order, if in fact the 1st respondent was making construction contrary to the provisions of the Act. It is settled law that in respect of illegal constructions being made, even a neighbour or person in the locality would have locus standi to get impleaded in pending proceedings.

18. Since the question whether construction originally being made by the 1st respondent is an illegal construction or not is a matter to be decided in the suit, this Court is not expressing any opinion thereon. However, in my considered opinion, the presence of the petitioner is necessary to enable the Court to effectively and completely adjudicate upon the questions involved in the suit.

19. Therefore, both these Civil Revision Petitions are allowed. The common order dt.26.03.2014 of the VI Junior Civil Judge, City Civil Court, Hyderabad in I.A.No.780 of 2013 in IA.No.433 of 2013 in O.S.No.1273 of 2013 and in IA.No.781 of 2013 in O.S.No.1273 of 2013 is set aside and both the I.As. are allowed. There shall be no order as to costs.

20. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

22nd September, 2015.

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