

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

CIVIL REVISION PETITION No.4675 of 2012

ORDER:

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This Revision is filed challenging the order dt.31-07-2012 in I.A.No.1410 of 2011 in O.S.No.230 of 2008 on the file of the Additional Junior Civil Judge, Vizianagaram.

2. The petitioner herein is a third party to the said suit. He is the brother of 1st respondent. 2nd respondent is the wife of 1st respondent.
3. Respondent Nos.1 and 2 had filed the said suit against respondent Nos.3 and 4 for a perpetual injunction restraining respondent Nos.3 and 4 from interfering with their alleged peaceful possession and enjoyment of the plaint schedule property. The plaint schedule property is a plot bearing No.51 in S.C. (Relli) Colony situated on the southern side of Lankapatnam, Vizianagaram town.
4. The petitioner filed I.A.No.1410 of 2011 under Order I Rule 10 C.P.C. to implead him as third defendant in the suit. He contended that the plaint schedule property was in fact assigned to him and respondent Nos.1 and 2 have no right whatsoever therein. He contended that the papers relating to the plaint schedule property were taken away by respondent Nos.1 and 2 and since his name is "Pydiraju" and the name of 1st respondent is "China Pydiraju", taking advantage of the similarity in name and with a view to grab the plaint schedule property, 1st respondent filed the suit impersonating as the petitioner. He

contended that he is the absolute owner of the plaint schedule property and unless he is impleaded as a party in the suit, the truth will not come out.

5. Respondent Nos.1 and 2 opposed the impleadment contending that it is the petitioner, who is an impostor and that he is a divided elder brother of 1st respondent. They contended that the suit being one for injunction, a third party such as petitioner has no *locus standi* to get himself impleaded and compel them to litigate against the petitioner. They alleged that the suit was filed when 4th respondent issued a notice under the provisions of the A.P. Land Encroachment Act, 1905 to vacate the suit schedule property, and that the suit was filed in the year 2008 and after waiting for 3 years, the petitioner has come forward with the present application. They also contended that 1st respondent is in possession of the suit schedule property.
6. By order dt.31-07-2012, the Court below dismissed the said application. It held that the trial in the suit had already commenced and 1st respondent had filed his affidavit in lieu of chief-examination and marked Exs.A-1 to A-9 and at that stage the present application is filed for impleadment of petitioner. It observed that since the trial has commenced, in view of proviso to Order VI Rule 17 C.P.C., amendment cannot be permitted unless proper reasons are given.
7. Clearly the Court below had mistakenly presumed that the application filed by petitioner was for seeking amendment of the pleadings in the suit instead of an application for impleadment.
8. That apart, the Court below observed that in a suit for injunction

plaintiff is the *dominus litis* and he has right to choose against whom he has to file the suit and no third party can be impleaded to compel the plaintiff to litigate against him.

9. While normally this may be so, in the present case the contention of the petitioner is that 1st respondent has impersonated him and that it is the petitioner, who is the real owner of the property, but the 1st respondent is masquerading as petitioner and intending to grab the suit schedule property by obtaining a decree in the suit. If the allegation made by petitioner is correct, then 1st respondent cannot be said to have approached the Court with clean hands and would not be entitled to any injunctive relief in the suit. Therefore, to ascertain whether 1st respondent's claim is *bonafide* and to decide the question whether he is the owner of the suit schedule property or not at least *prima facie*, the presence of petitioner is necessary. I am therefore of the view that the Court below was not correct in dismissing I.A.No.1410 of 2011.
10. Accordingly, the Civil Revision Petition is allowed and the order dt.31-07-2012 in I.A.No.1410 of 2011 in O.S.No.230 of 2008 of the Additional Junior Civil Judge, Vizianagarm is set aside and the said I.A. is allowed. No costs.
11. As a sequel, miscellaneous petitions pending if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 22-09-2015

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