

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

CIVIL REVISION PETITION NO.1926 OF 2015

ORDER:

This Revision is filed challenging the order dated 30.03.2015 in I.A.No.2738 of 2013 in O.S.No.271 of 2013 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad.

2. Petitioner herein is the defendant in O.S.No.271 of 2013 on the file of the said Court. The first respondent/plaintiff filed the said suit against the petitioner for specific performance by directing petitioner to execute and register a development agreement in respect of the plaint schedule property and damages of Rs.5,00,000/- and costs.

3. The subject matter of the suit is located in Jubilee Hills and forms part of the land allotted to Jubilee Hills Co-operative House Building Society, Hyderabad (the second respondent herein) by the Government.

4. According to the first respondent, petitioner approached first respondent to develop his property and they had orally agreed that 50% of the built up area and undivided share in land would go to the petitioner and the other 50% would be enjoyed by it. It appears that the Government had issued G.O.Ms.No.623 M.A. & U.D. (M) Department dated 08.09.2008 restricting height of buildings in the Jubilee Hills area to 10 meters. The said G.O. was questioned by the second respondent before this Court in W.P.No.25368 of 2008 and in W.P.M.P.No.33155 of 2008 on 19.11.2008, this Court had suspended the operation of the said G.O.

5. The petitioner, therefore, filed I.A.No.2738 of 2013 to implead the second respondent as a party in the suit contending that the said Writ Petition is still pending and the said society has a lien and dual ownership over the subject land since the subject land was allotted to the petitioner by the said society. He contended that construction of the multistoried complex in this property would be subject to the

decision regarding the legality or otherwise of G.O.Ms.No.623 dt. 08.09.2008 before this Court and therefore, the second respondent is a proper party.

6. Counter affidavit was filed by the first respondent opposing the impleadment of the second respondent. The first respondent contended that this application is filed only to delay the proceedings and that once the society has allotted a plot to a member and executed a sale deed in his favour, the title stands in his name, that the society is no longer the owner nor would they have dual ownership as claimed by the petitioner. It was also denied that there is a prohibition to construct a building more than 10 meters height as per the said G.O. It was also denied that the second respondent had a lien over the plot belonging to the petitioner.

7. By order dated 30.03.2015, the Court below dismissed the said application. It held that the suit is filed for specific performance of the oral agreement of development of property, that the first respondent only has the choice to implead parties in the said suit, and that the proposed respondent/second respondent is in no way concerned with the suit transaction. It further held that the second respondent is not concerned with the suit proceedings and that the second respondent is an unnecessary party to the litigation.

8. Challenging the same, this revision is filed.

9. Heard Sri G.Mallikarjuna Rao, learned counsel for the petitioner. None appears for the first respondent even though notice in the Revision has been served on the first respondent. Sri C.V.R.Rudra Prasad, learned counsel for the second respondent filed counter affidavit in the Revision opposing the revision.

10. It is contended by the second respondent that in the plaint/written statement, there is no reference to the second respondent at all and that the challenge to G.O.Ms.No.623 referred to by the petitioner has nothing to do with the *lis* between the petitioner and the first respondent. It is contended that the second respondent is not a

necessary party to the suit for specific performance filed by the first respondent/developer against the petitioner/plot owner and that if the third party wants to make improvements in the plot allotted by the society and sold by it, the society would have no objection so long as constructions are made in accordance with law.

11. There is no dispute that the plot, which is the subject matter of the suit, is located in the area allotted by the Government to the second respondent-society. The petitioner is the owner of the said plot and the first respondent is a developer who alleges that there is an oral agreement with the petitioner for development of the said plot on sharing basis. There is no dispute that the first respondent wants to build a multistoried commercial complex in the plot belonging to the petitioner.

12. According to the petitioner, the construction proposed by the first respondent itself would be in violation of G.O.Ms.No.623 dt. 08.09.2008 issued by the Government since Government had prohibited making constructions beyond the height of 10 meters in the said G.O. and that the second respondent-society had itself questioned the said G.O. The petitioner has even contended that the second respondent has a lien and dual ownership over the plot in question and is, therefore, a proper party.

13. No doubt, it is a suit for specific performance and normally, only parties to the agreement of sale are to be impleaded, but here the question is whether the construction or the development proposed by the first respondent in the plot belonging to the petitioner on the basis of which the suit is filed is in accordance with law or not. Since admittedly the second respondent-society had questioned the said G.O., and the said Writ Petition is pending on the file of this Court, and since the first respondent has not appeared before this Court and opposed the Revision, I am of the opinion that notwithstanding the objection of the second respondent, since the second respondent is a proper party, second respondent can be impleaded as second defendant in the suit.

14. Therefore, this Civil Revision Petition is allowed and the order dated 30.03.2015 in I.A.No.2738 of 2013 in O.S.No.271 of 2013 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad, is set aside and the said I.A. is allowed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(M.S.RAMACHANDRA RAO, J)

5th October 2015

RRB