

**HON'BLE SRI JUSTICE R. SUBHASH REDDY**

**Civil Revision Petition No.2180 of 2015**

**ORDER:**

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner-proposed defendant No.9 in O.S.No.408 of 1998, aggrieved by the order dated 31.12.2014 passed in I.A.No.2 of 2014, dismissing the said I.A., filed under Order I Rule 10 CPC.

The aforesaid suit is filed by respondents 1 to 3 questioning the grant of permission for construction issued in favour of defendants 2 to 6 in the suit in respect of the suit plot and for mandatory injunction to demolish the structures which are constructed in the suit schedule property. In the suit, the petitioner herein has filed implead petition alleging that he has constructed the building by entering into agreement for development dated 13.12.1994 with defendants 2 to 6 and he is the owner to the extent of 50% in the built-up area and defendants 2 to 6 are having 50% share in the built-up area. It is alleged that after construction, built-up area is divided in the ratio of 50:50 and thereafter defendants 2 to 6 have executed ratification-cum-Memorandum of Understanding dated 05.03.2004 which was registered as document No.623 of 2004. It is further pleaded that he is the affected party and any negligence on the part of defendants 2 to 6 will result in huge loss to him.

In the said I.A., counter-affidavit is filed. While denying the various allegations, in the counter-affidavit, it is stated that defendants are not aware of any ratification-cum-Memorandum of Understanding and further pleading that defendants 2 to 6 have filed written statement and are contesting the suit, as such, petitioner is not necessary party to the suit. The Court below, by the impugned order, recording a finding that the plan sanctioned by the Municipal Corporation of Hyderabad is approved in favour of defendants 2 to 6 and further recording a finding that defendants 2 to 6 are seriously contesting the matter and there is no reason for the petitioner not filing such

application for last several years, dismissed the I.A., filed by the petitioner.

Heard Sri M.S. Prasad, learned senior counsel assisted by Sri M.A. Aleem Majid, learned counsel on record for the petitioner and the learned counsel for the respondents.

It is submitted by the learned senior counsel for the petitioner that as the construction of building itself is on development basis, pursuant to agreement for development dated 13.12.1994, which resulted in ratification-cum-Memorandum of Understanding dated 05.03.2004, registered as document No.623/2004 and if any orders are passed, the petitioner will be affected. It is further submitted that as the petitioner is having 50% share in the built-up area which is allotted to him pursuant to agreement for development, he will be directly-affected party and for resolution of the issues which fall for consideration, the petitioner is proper and necessary party to the suit.

On the other, it is submitted by the learned counsel for the respondents that petitioner, at no point of time, made any attempt to implead himself as party-defendant and at this last hour, he has filed I.A., seeking impleadment.

It is true that agreement for development is not filed before the Court below, but by way of M.P.No.3604 of 2014, the agreement for development and ratification-cum-Memorandum of Understanding vide document No.623/04 and a copy of the plaint is placed on record which is allowed vide separate order. From a perusal of the aforesaid document, it is clear that the petitioner has entered into development agreement with defendants 2 to 6 in the suit, which resulted in Memorandum of Understanding. For the purpose of considering the petition filed under Order I Rule 10 CPC, the only aspect which is required to be considered is whether any prima facie case is made to prove interest in the subject-matter and whether such party is proper and necessary party for resolution of the issue in the suit. When the suit filed by respondents 1 to 3 is questioning the permit granted by the Municipality, pursuant to which development is

made by the petitioner by entering into development agreement, petitioner will be affected party. Whenever development is made by the developer, permit will be issued in the name of the owners. Merely because permit is issued in the name of the owners, that, by itself is no ground to reject the I.A., filed for impleadment. Having regard to the material on record, this Court is of the view that, for proper resolution of the disputes in the suit, petitioner is proper and necessary party. If the petitioner is not allowed to implead in the suit, it will result in multiplicity of proceedings. In that view of the matter, as the petitioner is directly interested in the subject-matter of the suit, as such, he may be allowed to be impleaded in the suit. It is true that there is some delay on the part of the petitioner; however, that, by itself, is no ground to reject the petition seeking impleadment.

For the aforesaid reasons, the order dated 31.12.2014 passed in I.A.No.2 of 2014 is set aside. Consequently, the said I.A., stands allowed. However, it is made clear that admissibility of documents and merits of the claim made by the petitioner shall be gone into independently, uninfluenced by any of the observations made in this order.

Civil Revision Petition is allowed to the extent indicated above. No order as to costs.

As a sequel, miscellaneous petitions if any pending in the CRP stand closed.

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R. SUBHASH REDDY, J

October 1, 2015

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