

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

C.R.P. No. 2032 of 2015

Between:

Sri Vyasa Ashramam

... Petitioner

And

Chunduru Bhooshana Kumari and others

... Respondents

JUDGMENT PRONOUNCED ON : 21.08.2015

THE HON'BLE SRI JUSTICE : G.CHANDRAIAH

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
marked to Law Reporters/Journals. :
3. Whether their Ladyship/Lordship wish to
see the fair copy of the Judgment? :

THE HONOURABLE SRI JUSTICE G.CHANDRAIAH

C.R.P. No.2032 of 2015

ORDER:

This revision petition has been filed aggrieved by the order dated 11.03.2015 passed in I.A. No.455 of 2014 in O.S. No.35 of 2007 by the VIII Additional District and Sessions Judge, Vijayawada.

The revision petitioner is the proposed 7th defendant and the 1st respondent herein is the plaintiff and the respondents 2 to 7 herein are the defendants 1 to 6 in O.S. No.35 of 2007.

O.S. No.35 of 2007 was filed by the plaintiff seeking to declare her as the absolute owner of the schedule property.

I.A. No.455 of 2014 in O.S. No.35 of 2007 was filed by the revision petitioner under Order I Rule 10 CPC seeking to implead as the 7th defendant in the said suit. The learned trial Court vide its order dated 11.03.2015 dismissed the said I.A. Assailing the same, the revision petitioner filed the present revision petition.

Brief facts of the case are that the plaintiff filed the said suit to declare her as the absolute owner of suit scheduled property to an extent of Acs.2.26 cents of agricultural land in R.S. No.462/2 Patta No.532, situated at Poranki village, Penamaluru Mandal, Krishna District.

The revision petitioner is interested only to an extent of 90 cents of land out of total Acs.2.26 cents.

The learned counsel for the revision petitioner submitted that he is not aware about the pendency of the suit. When he came to know about the pendency of the suit and nature of the relief sought for therein he realized that his rights will affect in respect of 90 cents of land and therefore, he filed I.A. No.455 of 2014 seeking to implead him as necessary party to the suit proceedings. It is also submitted that the observation made by the Court below to the effect that under Section 35 of Specific Relief Act declaratory relief is binding on the parties to the suit and the persons claiming through

them Vyasasramam is not claiming rights through Paramatmananda Ashramam and as such, the relief if any on D-1 Parmatmananda Ashramam is not binding on Vyasasramam, therefore, the revision petitioner is not entitled to come on record is not sustainable. In support of his contention he placed reliance in the case of **K.RAMA RAO AND OTHERS v. M.A. BARI AND OTHERS**^[1]. He also placed reliance in the case of **BALVANT N. VISWAMITRA AND OTHERS v. YADAV SADASHIV MULE (DEAD) THROUGH LRS. AND OTHERS**^[2] and drew the attention of this Court to distinguish the words of *necessary party* and *proper party*. A *necessary party* is one without whom no order can be made effectively; and a *proper party* is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceedings. It is also submitted by the learned counsel that in the plaint there is a recital about the property held by the revision petitioner. He further drew the attention of this Court to the written statement of the 1st defendant at para 5 wherein it is referred about the rights on the 90 cents of land, which is included in the subject matter of the suit scheduled property. Therefore, the revision petitioner is not only the proper party but also the necessary party to the suit proceedings.

In view of the above all, the Court below committed an error in dismissing the application filed by the revision petitioner, without considering the merits of the case.

On the other hand, the learned counsel appearing for the 1st defendant, Sri Paramatmananda Ashramam, reiterated the observations made by the Court below to the effect that the decree passed in the suit will binds only on the parties to the suit and it will not affect beyond the scope of it. Therefore, the reasons given by the Court below in dismissing the application, filed by the revision petitioner, are sustainable in law and it does not suffer from any legal infirmity. In support of his contention he placed reliance in the case of **ATLURI KUCHELA RAO v. DISTRICT COLLECTOR, HYDERABAD AND ANOTHER**^[3] and submitted that a decree for declaration of title would operate only against the parties to it. In case a person, who is not a party to

the decree, claims and proves better title, the decree obtained by an individual does not come in the way.

The learned counsel also submitted that the revision petitioner is no way concerned with the property and the matter is of the year 2007. The revision petitioner filed the said I.A., only with an intention to drag on the proceedings. It is also submitted that on the earlier occasion, in respect of very same matter CMA. No.1005 of 2007 was filed by the plaintiff wherein this Court categorically observed the oldness of the matter and directed the Court below to dispose of the said suit on its own merits expeditiously. At this fag end of the proceedings, application was filed by the revision petitioner with *mala fide* intention to protract the proceedings and therefore, the Court below rightly dismissed the said application.

The learned senior counsel, Sri Prakash Reddy, appearing for the 5th respondent, vehemently contended that the Court below had rightly dismissed the application filed by the revision petitioner on sustainable grounds that any relief that would pass under Section 35 of the Specific Relief Act is binding on the parties to the suit and if he has any claim in respect of the property he is interested he can take steps for necessary relief by filing proper proceedings before the Court of law to protect his interest. Alternatively, he also submitted that if for any reason this Court feels that the revision petitioner has to come on record, the matter may be split over separately for the purpose of adjudicating the claim of the revision petitioner so as not to disturb the suit proceedings at this fag end as it is posted for arguments.

The learned counsel appearing for the 6th respondent adopted the arguments of the learned senior counsel, who appeared for the 5th respondent.

Heard the learned counsel on either side and perused the material on record.

The point that arises for consideration is whether the observation made by the Court below under the impugned order that “*Under section 35 of*

Specific Relief Act declaratory relief is binding on the parties to the suit and the persons claiming through them. Vyasasramam is not claiming rights through Paramatmananda Ashramam and as such, the relief if any on D-1 Paramatmananda Ashramam is not binding on Vyasasramam.

The stand of the plaintiff is not that Vyasasramam is denying their right and it is not their case that Vyasasramam is interfering with peaceful possession and enjoyment of suit schedule property” is sustainable in law?

The relief sought for in O.S. No.35 of 2007 is as follows:

“1. To declare that the Plaintiff is the absolute owner of the schedule property by virtue of the Will dated 05-01-2003;

2. for Permanent injunction restraining the defendants, their men, associates and their supporters from interfering with the plaintiff’s peaceful possession and enjoyment of her suit schedule property;

3. for costs of the suit and for any other order which the Court deems fit and necessary.”

As could be seen from the plaint averments, it is clear that there is a reference about the 90 cents of land, which is part and parcel of total suit scheduled property to an extent of Acs.2.26 cents. The learned counsel for the revision petitioner specifically drew the attention of this Court to the cause title referred to in the plaint, which shows that the Paramatmananda Ashramam represented by its Chief Secretary, Sri Sankarananda Swamy, Hindu aged about 45 years, which is part of Vyasasramam headed by Malayalaswamy, R/o.Poranki, Penamaluru Mandal, Krishna District. From the above, it is clear that the Paramatmananda Ashramam is part of Vyasasramam, headed by Malayalaswamy, who is no more.

During the pendency of the suit, as the 2nd defendant, Dr.Bhavineni Karunakar, died on 02.11.2008, his legal representatives have been brought on record as defendants 3 to 6 by virtue of amended orders dated 16.10.2012

passed in I.A. No.896 of 2012.

For better appreciation of the aspect that how the revision petitioner is interested in 90 cents of land out of total suit scheduled land, it is necessary to extract the para 5 from the written statement of the 1st defendant, which reads as under:

“5. It is submitted that an extent of Ac.0.90 cents out of Ac.2.26 cents in R.S.No.462/2 of Poranki village, Krishna District was sold by Smt. Karlapudi Bhadramma, W/o. Karlapudi Kotaiah to Kilaru Appaiah, S/o.Kilaru Krishnaiah for a total sale consideration of Rs.700/- under a sale deed dated 29.01.1942 and registered as Document No.133/1942 in the office of Sub-Registrar, Kankipadu. The possession of the said property was delivered to the vendee on the date of the sale deed. Kilaru Appaiah enjoyed the said property as an absolute owner to the knowledge of one and all.

The said Kilaru Appaiah gifted the said property to Vyasa Ashramam, Rep. by Sri Malayala Swamy, who is the discipie of Sri Sivalinga Giri Swamyvaru under a registered Settlement Deed dated 03.06.1943 and registered as document No.862/1943 in the office of the Sub-Registrar, Kankipadu. The said gift was accepted by Vyasa Ashramam. Vyasa Ashramam took possession of the said property. The said property was gifted to Vyasa Ashramam for religious purposes with absolute rights. An Ashramam known as Paramatmananda Ashramam was established in the year 1942 and the plaint schedule property was entrusted to the Ashramam and the same is being managed by the Ashramam on behalf of Vyasa Ashramam which is located in Yerpedu of Chittore District.”

From the above statement, it is clear that 90 cents of land is part and parcel of total suit schedule property to an extent of Acs.2.26 cents in R.S. No.462/2 of Pranki village, Krishna District. Initially, the said land was sold by one K.Bhadramma to one K.Appaiah, who later gifted the same to the Vyasa Ashramam. Paramatmanada Ashramam was established in the year 1942 and the plaint schedule property was entrusted to the Paramatmananda

Ashramam for managing on behalf of the Vyasa Ashramam. In other words, the subject property of 90 cents is directly gifted to Vyasa Ashramam and the Vyasa Ashramam entrusted the same for managing to Paramatmanada Ashramam, which is part of Vyasa Ashramam. So it can be said that the Vyasa Ashramam is directly having interest over the 90 cents of subject land.

Coming to the aspect of exercising power under Order I Rule 10 of Code of Civil Procedure, 1908, which reads as under:

“Suit in name of wrong plaintiff.- (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) **Court may strike out or add parties.-** The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) **Where defendant added, plaint to be amended.-** Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.”

From the overall reading of the above Order, it is clear that the Court may at any stage of the proceedings, whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

Since the said Order empowered the Court to permit any party at any stage of the suit, if satisfied, to come on record and having regard to the facts and circumstances of the case and the specific ground that the revision petitioner is not aware of the pendency of the suit proceedings, *prima facie*, this Court feels that the revision petitioner's substantial interest is involved in respect of 90 cents of land. Therefore, his representation before the Court of law is necessary in order to enable the Court effectually and completely to adjudicate and settle all the questions involved in the suit. In that view of the matter, I am of the view that the Court below committed an error in exercising the powers vested under Order I Rule 10 of CPC.

An alternative submission made by the learned senior counsel, Sri Prakash Reddy, appearing for the 5th respondent, across the Bar, to the effect that if for any reason this Court comes to a conclusion that the revision petitioner is proper and necessary party to come on record, the Court below may be directed to take up the proceedings day to day basis and dispose of the suit expeditiously.

In this connection, since this Court had already come to a conclusion that the revision petitioner is the proper and necessary party to come on record, it is once again necessary to refer the order already passed by this Court in CMA. No.1005 of 2007 wherein, this Court categorically directed the Court below to dispose of the suit expeditiously. Taking into consideration the said direction, this Court intends to dispose of this revision petition with the following directions.

The impugned order dated 11.03.2015 passed in I.A. No.455 of 2014 in

O.S. No.35 of 2007 by the VIII Additional District and Sessions Judge is set aside and the revision petitioner, proposed 7th defendant, is permitted to come on record in O.S. No.35 of 2007.

The parties to the suit shall cooperate with the Court below in disposing of the suit, as early as possible.

The Court below, where the present suit proceedings are pending, is directed to dispose of the suit, in accordance with law, as expeditiously as possible, preferably within a period of one year, without influencing the observations, if any, made by this Court in this order.

In the result, this Civil Revision Petition is allowed.

Consequently, as a sequel, miscellaneous petitions, if any, stands closed. There shall be no order as to costs.

JUSTICE G.CHANDRAIAH

Date: 21.08.2015

Note: L.R. copy to be marked Yes / No
B/o.
LSK

[\[1\]](#) 2007 (6) ALD 577

[\[2\]](#) (2004) 8 Supreme Court Cases 706

[\[3\]](#) 2012 (3) ALD 83