

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.2961 OF 2015

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.06.05.2015 in I.A.No.315 of 2015 in OS.No.88 of 2009 of the II Additional Junior Civil Judge, Warangal.

2. The 1st respondent filed the said suit against respondents 2 to 5 for perpetual injunction restraining them from interfering with his alleged peaceful possession and enjoyment of the plaint schedule property.

3. In the plaint, he alleged that he is the owner of the plaint schedule land admeasuring 1190 sq.yards in survey No.110 of Shyampet Jagir Village, Hanamkonda Mandal, Warangal District containing a room with municipal No.23-6-115/3 and pleaded that the respondents 2 to 4 were interfering with his alleged possession and enjoyment thereof.

4. In the written statement filed by the 4th defendant/4th respondent herein, it was specifically disputed that the petitioner is the absolute owner of the said property. The respondents 2 to 4 contended that the title to the property in question had been with the father of the 4th respondent and possession thereof was with the respondents 2 to 4. He also

pleaded that O.S.No.499 of 2002 had been filed by the 4th respondent against the vendor of the 1st respondent and that he had succeeded in the said suit.

5. Issues were framed and trial commenced. PWs.1 to 4 were examined and chief examination affidavit of PW5 was filed. In fact, the 3rd petitioner herein was examined as PW2 in the year 2014 in support of the case of the 1st respondent.

6. At that stage, an application IA.No.315 of 2015 under Order I Rule 10 CPC was filed by the petitioners alleging that they are co-owners in respect of a portion of 1154 sq.yards, out of the suit land of 1190 sq.yards in survey No.110 of Shyampet Jagir Village along with 1st respondent; that the 1st respondent/plaintiff was managing the property and the petitioners, because of their avocations and employments, had entrusted the management to the 1st respondent; and he had filed the suit for injunction against the respondents 2 to 4. They alleged that since they are owners and possessors of 1154 sq. yards forming part of the suit schedule property, they are interested parties and ought to be impleaded therein.

7. Counter affidavit was filed by the 4th respondent opposing the impleadment and contending that the application is filed belatedly. He pointed out that in the written statement filed by him in 2009 itself, he had questioned the competency of the 1st respondent to file the suit but six years thereafter this

application has been filed with an intention to delay the disposal of the suit, which is nothing but abuse of process. He also contended that the 3rd petitioner had already been examined as PW2 on behalf of the 1st respondent in the suit in November, 2013 itself and to fill up the lacuna and to overcome the admission in the cross examination of PW2, this application has been filed. It was also contended that the trial commenced in July 2012, but on some pretext or the other, the 1st respondent was dragging on the matter and preventing the 4th respondent from enjoying the fruits of the decree in O.S.No.399 of 2002. He further contended that in an injunction suit, persons who were strangers to the cause of action cannot be said to be interested persons and allowed to be impleaded.

8. By order dt.06.05.2015, the Court below dismissed the said application.

9. It held that the petitioners had no cause of action to get impleaded in the suit and rejected the contention of the counsel for the petitioners that the earlier counsel for the 1st respondent/plaintiff in the main suit did not file implead petition on account of inadvertence. It also noted that 3rd petitioner had been examined as PW2 in the suit and even thereafter two more witnesses had been examined and when the matter is coming for cross-examination of PW5, the present

application had been filed to cover up the lacuna in the case of the 1st respondent, probably in collusion with the 1st respondent. It also held that the 1st respondent had not mentioned about the petitioners in his pleadings and that the 3rd petitioner, having got himself examined in 2013-14, ought to have filed a petition if he so felt to get himself impleaded in 2014 itself; and when the suit is at an advanced stage, he cannot file this application.

10. Challenging the same this Revision is filed.

11. Sri J.Venkat Reddy, counsel for the petitioners contended that the petitioners had been misled by the earlier counsel engaged by the 1st respondent and since the petitioners are interested in the suit schedule property, the Court below should have impleaded them and if necessary compensate the others by imposing costs.

12. Sri C.A.R.Seshagiri Rao, counsel for respondents 2 to 4 refuted the above contentions and pointed out that the suit is of the year 2009 and trial commenced in July, 2012. The 1st respondent had been dragging on the matter and the case is now posted for cross-examination of PW5. He further contended that in the plaint itself, there is no pleading that the petitioners are co-owners of portion of the suit schedule property; that the application for temporary injunction filed by the 1st respondent had been dismissed on 18.03.2010 in IA.No.161 of 2009 and was also confirmed in CMA.No.31 of

2010 by the IV Additional District Judge, Warangal; that to fill up the lacuna in the evidence of PWs.1 to 4, this application had been filed at a belated stage; and if the petitioners are impleaded now, it would cause grave prejudice to the respondents 2 to 4. He also contended that the petitioners have no cause of action against the respondents 2 to 4 and therefore, the petitioners ought not to be allowed to get impleaded in the suit.

13. I have noted the submissions of both sides.

14. The 1st respondent/plaintiff had filed the suit O.S.No.88 of 2009 for perpetual injunction but in the plaint he had only described himself as absolute owner and had not mentioned the petitioners as his co-owners. Even according to the petitioners, the 1st respondent is taking care of the suit schedule property and is managing the same as the petitioners were not able to do so in view of their avocation/employment. They even do not dispute that the 3rd petitioner had been examined as PW2 in the suit in 2013 as well as in 2014. One year thereafter, this application has been filed by the petitioners to get impleaded in the suit. The petitioners are not entitled to throw blame on the earlier counsel for the 1st respondent for the failure to implead them in the suit, since the petitioners could have as well consulted another counsel at Warangal and filed the application for

impleadment.

15. The petitioners, except stating that they are interested in the suit schedule property, have not stated anything in the application for their impleadment that they have cause of action against respondents 2 to 4.

16. Since the suit is at the advanced stage of cross-examination of PW5, impleadment of the petitioners at this stage would delay the disposal of the suit. Moreover, it is difficult to believe that the petitioners were unaware of the filing of the suit and that the 1st respondent/plaintiff had not informed them about the suit.

17. Therefore, in my opinion, the Court below was right in not allowing the application impleading the petitioners as plaintiffs 2 to 4 in the suit at the stage of cross-examination of PW5. I also agree with the reasoning of the Court below that the petitioner had not shown that they had any cause of action to get impleaded in the suit.

18. So, I do not find any merits in this Revision and it is accordingly dismissed. There shall be no order as to costs.

19. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

19th August, 2015.

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