

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

CIVIL REVISION PETITION No.487 of 2015

ORDER:

This Civil Revision Petition is filed challenging the order dt.31-12-2014 in I.A.No.263 of 2014 in O.S.No.349 of 2008 of the I Additional Junior Civil Judge, Visakhapatnam.

2. The petitioners herein are defendants in the above suit.

3. The said suit was filed by 2nd respondent against petitioners for a perpetual injunction restraining the petitioners from interfering with his peaceful possession and enjoyment of the suit schedule property and for costs. The subject matter of the suit is an apartment Flat No.3 covered by Sy.No.61/2 situated at Venkojipalem, Visakhapatnam along with undivided share of extent 38 sq. yards out of 434.14 sq. yards.

4. The 2nd respondent alleged that certain property belonging to his family along with neighbouring property was given for development to 1st petitioner firm; an apartment complex by name Lotus Plaza was

constructed; registered sale deed was also executed by 1st petitioner in favour of 2nd respondent with regard to the subject property on

19-04-2006; the 1st petitioner stopped construction of apartment midway and expressed his inability to complete the construction by a letter dt.18-03-2008 and requested the 2nd respondent to complete the balance works by himself, but when he started doing the balance works, the other petitioners obstructed him.

5. Written statement was filed by petitioner Nos.1, 4 and 5 opposing the suit claim. They raised a plea that 2nd respondent did not enter into any construction agreement in relation to plaint schedule property and the same was purchased by 4th petitioner from 1st petitioner. It was also contended that 1st respondent, who is shown as the Managing Partner of the 1st petitioner had nothing to do with the 1st petitioner or the building Lotus Plaza. It was contended that Sri B.Sudhakara Reddy is the first Managing Partner and 1st respondent is the other Managing Partner and there are 3 other working partners. It was also alleged that 1st respondent had not contributed anything and he was taken to look after the day-to-day work of the firm only. It was alleged that 1st respondent

was issued a notice by other 4 partners and was made to stop to participate in the works and activities of the 1st petitioner since April, 2006.

6. Issues were framed and trial commenced. The plaintiff side evidence was closed and defendants' side evidence is being taken up.

7. At that stage, 1st respondent filed I.A.No.263 of 2014 under Order I Rule 10 C.P.C. to implead him as 6th defendant in the main suit. He described himself as the Managing Partner of the

1st petitioner firm and raised certain contentions which seem to indicate that he had some role in the construction of Lotus Plaza by

1st petitioner. He claimed that petitioner Nos.2 to 5 had entered into an agreement to sell with a G.P.A. dt.06-10-2005 with 1st petitioner represented by himself and that he was appointed as the agent of the other 4 partners and as their Power of Attorney holder under registered document No.4591 of 2005. He made certain allegations against other partners also. He claimed that he came to know about the filing of the present suit by 2nd respondent through his son wherein it is indicated that he was the Managing Partner and other partners were shown as

defendants. He claimed that he was never expelled from the firm as a partner and the plea that he was so expelled in April, 2006 is a false plea raised by petitioner Nos.2 to 5. He contended that he was a necessary and proper party to the suit and his presence and participation is required to decide the real questions involved in the suit including whether he had a role of authority to represent the 1st petitioner firm in executing sale deed in favour of 2nd respondent with regard to the schedule property.

8. This application was opposed by 1st petitioner and respondent Nos.4 to 5 stating that this application is filed belatedly and in this suit dispute between 1st respondent and partners of 1st petitioner firm is not in issue. Several other objections were also raised therein apart from contending that 2nd respondent had now joined hands with

1st respondent and that the scope of the suit and the scope of enquiry would be totally altered, if he is impleaded.

9. By order dt.31-12-2014, the Court below allowed I.A.No.263 of 2014 stating that even according to the averments made in the plaint by 2nd respondent, the 1st respondent had transacted under

Ex.A-1 and B-76 on behalf of 1st petitioner and that without his presence, the suit cannot be disposed of effectively. The Court below restrained itself from making any further observations on the *inter se* claims of the parties in the suit so as to not prejudice any party. It also observed that plaint still indicates that 1st petitioner is represented by 1st respondent, but the 5th petitioner had already filed a written statement on behalf of 1st petitioner. In this view of the matter, it directed the 2nd respondent to amend the cause title with regard to 1st petitioner by adding the name of 5th petitioner also as the Managing Partner of the firm apart from the name of 1st petitioner since he is shown also as Managing Partner in Ex.B-75.

10. Challenging the same, this Civil Revision Petition is filed.

11. Learned counsel for petitioners contended that earlier, after completion of the evidence of 2nd respondent/plaintiff, the petitioners had pressed for examination of 1st petitioner on their side and the 2nd respondent then filed a memo reserving his right to cross-examine the witness after closure of petitioners' side evidence. They also contended that it shows

collusion between 2nd respondent and 1st petitioner. He also contended that a legal notice had been issued by 1st respondent claiming that he had been expelled from the 1st petitioner firm and that certain arbitration proceedings are also pending where the said expulsion is the subject matter. He therefore prayed that the impugned order be set aside.

12. Although notice has been sent to 1st respondent and has been served, there is no representation on behalf of 1st respondent. Notice sent to 2nd respondent had not yet been returned.

13. Admittedly, the 1st petitioner and respondent Nos.4 and 5 at one point of time wanted the 1st respondent to be examined on their side as their witness. Now he himself is coming forward to be impleaded in the suit and may possibly give evidence. Therefore their desire to examine him as a witness will be satisfied.

14. No doubt the question whether 1st respondent is a Partner in the 1st petitioner firm or not is extraneous to the suit in as much as the matter appears to be in dispute in arbitration proceedings. But the fact remains that 1st

respondent had transactions under Exs.A-1 and B-76 with 2nd respondent on behalf of 1st petitioner. Therefore, he has some connection with the suit transactions.

15. In this view of the matter, I am of the opinion that the Court below had rightly held that the presence of 1st respondent is necessary to effectually and completely adjudicate upon to settle all questions involved in the suit.

16. Therefore I do not find any merit in the Revision and it is accordingly dismissed. No costs.

17. Since the suit is of the year 2008, the Court below is directed to expeditiously dispose of the same preferably within 6 months from the date of receipt of a copy of this order.

18. As a sequel, miscellaneous petitions pending if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 28-08-2015

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