

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

CIVIL REVISION PETITION No.4525 of 2013

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ORDER:
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This Civil Revision Petition is filed challenging the order

dt.13-09-2012 in I.A.No.130 of 2011 in I.A.No.1002 of 2010 in O.S.No.4290 of 2010 of the VI Junior Civil Judge, City Civil Court, Hyderabad.

2. The petitioners herein are defendants in the suit.
3. The respondent Nos.1 and 2 filed the above suit against petitioners and 3rd respondent for a perpetual injunction restraining the petitioners from erecting any further openings to their property (plaint 'B' schedule) and making any ingress and egress through their passage and raising any constructions in violation of Municipal bye-laws.
4. Written statement was filed by petitioners opposing the suit claim.
5. Issues were framed and trial commenced. During the evidence of D.W.1, the petitioners/defendants sought to mark a Memorandum of Understanding between the

common vendors of the parties, but the learned counsel for respondent Nos.1 and 2 opposed the same contending that D.W.1 cannot mark it because he is not a party to the said document. This objection was sustained by the trial Court. Therefore, the petitioners sought to implead the 4th respondent, who is the common vendor of both sides as a party.

6. In the said application, it was contended that the vendor by name P.Arun Gala (4th respondent) being common to both petitioners and respondent Nos.1 and 2, in his absence, the rights of the parties over the suit passage cannot be effectively adjudicated, and that the said person did not convey any right, title or interest in 12 feet passage.

7. This application was opposed by respondent Nos.1 and 2, who contended that there is no cause of action against the proposed party, that no relief has been sought against him by respondent Nos.1 and 2 and he ought not to be impleaded as a party in the suit.

8. By order dt.13-09-2012, the Court below dismissed the said application. It held that the petitioners did not properly explain the necessity to implead the 4th respondent as a party in the suit and the pleadings filed

by petitioners and respondent Nos.1 and 2 suggests that there is only dispute between them and the proposed party had no interest in the litigation. It observed that if the petitioners intend to establish that the disputed passage is common to both parties and other adjacent owners, they can summon their vendor/4th respondent to give evidence, for effective adjudication of the case and that there is no necessity to implead him as defendant in the suit.

9. Challenging the same, this Revision is filed.

10. The learned counsel for petitioners Sri G.Dhananjai contended that the presence of 4th respondent is necessary to effectively adjudicate the dispute between the parties since he is the common vendor for both petitioners as well as respondent Nos.1 and 2 and he can throw light on the rights conferred by him on petitioners as well as respondent Nos.1 and 2. He therefore contended that he is a necessary party to the suit and the Court below had erred in rejecting I.A.No.130 of 2011 to implead him as party in the suit.

11. This was opposed by the learned counsel for respondent Nos.1 and 2 Sri Pramod Kumar Kedia, who supported the order passed by the Court below.

12. The pleadings of the parties have been placed before me and a perusal thereof indicates that there is dispute between petitioners and respondent Nos.1 and 2 with regard to a passage existing in between their properties. The petitioners herein contend that the said passage is not the exclusive passage of respondent Nos.1 and 2 and that if the proposed party party/4th respondent is brought on record, he can correctly explain this fact. In my considered opinion, to get information on this aspect, it is not necessary that 4th respondent be impleaded as a party in the suit. He may as well be examined as a witness to throw light on the issue by either party if they so chose.

13. The learned counsel for petitioners sought to contend that respondent Nos.1 to 3 are also claiming interest in the passage; but 4th respondent has not filed any counter affidavit in the Court below on this aspect; and if really he has any grievance in respect of exercise of rights over the passage by respondent Nos.1 and 2, it is certainly open to 4th respondent to get adjudication of the same by a separate suit.

14. The judgment in **Amit Kumar Shaw and another** ^[1], no doubt dealt with **Vs. Farida Khatoon and another**

the objective of Order I Rule 10 CPC and held that a person may be added as party to the suit when he ought to have been joined as plaintiff or defendant, and is not joined, or when, without his presence, the questions in the suit cannot be completely decided. The Supreme Court held that the power of a Court to add a party to a proceeding cannot depend solely on the question whether he has interest in the suit property and that the question is whether the right of a person may be affected if he is not added as a party. These observations were made in the context of a question of impleadment regarding a purchaser *pendente lite*. The Court also held an alienee *pendente lite* is bound by the final decree that may be passed, and that he can be brought on record both under Order XXII Rule 10 CPC and also under Order I Rule 10 CPC. It held that since under the doctrine of *lis pendens*, a decree passed in the suit during the pendency of which a transfer is made, binds the transferee, his application to be brought on record should ordinarily be allowed. The present case is not one of transfer of *lis pendens*. Therefore, the principle laid down therein cannot apply to the present case.

15. I therefore do not find any merit in the Revision and it is accordingly dismissed giving liberty to the petitioners to

summon their vendor/4th respondent to give evidence, if they feel that his evidence would throw light on the matters in issue in the suit. No costs.

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

JUSTICE M.S. RAMACHANDRA RAO

Date: 13-07-2015

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[\[1\]](#) 2005(4) ALD 98 (SC)