

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

CIVIL REVISION PETITION No.658 of 2013

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ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.15-10-2012 in I.A.No.219 of 2012 in O.S.No.555 of 2011 of the I Additional Junior Civil Judge, Visakhapatnam

2. Heard Sri D.V.Madhusudhan Rao, learned counsel for petitioner, Sri Ch.Ravinder, learned counsel for respondent Nos.1 and 2 and Sri M.Rama Krishna, learned counsel for 3rd respondent.

3. The petitioner herein filed the suit against respondent Nos.1 and 2 for a perpetual injunction restraining respondent Nos.1 and 2 from interfering with his possession and enjoyment of the plaint schedule property. His plea was that he was a tenant of 1st respondent. In the plaint schedule, he referred to a bakery, which he is running as schedule-'A' and the kitchen in his occupation as schedule 'B'.

4. Written statement was filed by respondent Nos.1 and 2 contending that the plaint 'B' schedule property belongs to their daughter, 3rd respondent herein.

5. In view of the said averment, the petitioner filed I.A.No.219 of 2012 to implead the 3rd respondent as 3rd defendant in the suit since she is the actual owner of plaint 'B' schedule property according to respondent Nos.1 and 2. In the affidavit filed in support of the said application, it is also alleged by petitioner that the proposed 3rd respondent is also instrumental in violating an interim injunction order passed by the Court below and that she is a necessary party to the suit.

6. Counter affidavit was filed by respondent Nos.1 and 2 opposing the impleadment of 3rd respondent as a party in the suit. In the counter affidavit, the only plea raised by respondent Nos.1 and 2 opposing the impleadment of proposed 3rd respondent, is that no ground is mentioned in the affidavit filed by petitioner why petitioner wanted 3rd respondent to be brought on record. It is also contended that written statement was filed on 04-08-2011 and the application by petitioner to implead 3rd respondent was filed on 18-06-2012 and he should have taken steps at the earliest point of time.

7. By order dt.15-10-2012, the Court below dismissed I.A.No.219 of 2012. It held that according to the pleading

of petitioner in the plaint, the proposed party i.e. 3rd respondent had not done any transaction with petitioner in respect of the plaint schedule property and she never tried to cause any interference with the petitioner's possession of the plaint schedule property and so the proposed 3rd respondent cannot be added as a party to the suit as a matter of course when there are no such allegations against such individual. It further observed that 3rd respondent cannot be added as a party to the suit proceedings since it is not the contention of petitioner that she violated the interim orders in I.A.No.110 of 2011.

8. Challenging the same, this Revision is filed.

9. The learned counsel for petitioner contended that the reasoning of the Court below is incorrect; in the affidavit filed in support of the I.A., the petitioner had specifically alleged that the proposed 3rd respondent is also instrumental in violating the Court's interim order and this allegation was not noticed by the Court below. He further contended that since the proposed 3rd respondent is now revealed as the owner of the plaint 'B' schedule property, which is in his occupation, she is a necessary and proper party to the suit.

10. The learned counsel for respondents, on the other

hand, contended that the order passed by the Court below is correct and did not suffer from any error of jurisdiction warranting interference by this Court under Article 227 of the Constitution of India. They further contended that there is no allegation against proposed 3rd respondent in the plaint as originally filed and therefore she could not be impleaded as 3rd defendant in the suit.

11. I have noted the submissions of both sides.

12. The respondents have not disputed that in the written statement filed by respondent Nos.1 and 2 it has been revealed that it is the

3rd respondent, who is the owner of the plaint 'B' schedule property. It is not denied by respondents that at one point of time the petitioner was a tenant of both plaint 'A' and 'B' schedule properties. Of course they have now taken a plea that prior to the filing of the suit, the petitioner had vacated the premises, which is disputed by petitioner.

13. According to the petitioner, there were interim injunction orders granted in his favour by the trial Court in I.A.No.110 of 2011. But respondent Nos.1 and 2 have violated the same, and he had filed I.A.No.140 of 2011 under Order XXXIX Rule 2A CPC, which is pending.

14. In the affidavit filed in support of I.A.No.219 of 2012

seeking to implead 3rd respondent, the petitioner has also alleged that the proposed 3rd respondent is also instrumental in violating the Court's interim order. The Court below is not right in saying that it is not the contention of petitioner that 3rd respondent had violated the interim orders passed in I.A.No.110 of 2011. Since the stand of respondent Nos.1 and 2 is that 3rd respondent is the owner of plaint 'B' schedule property and since according to petitioner he was the tenant of both 'A' and 'B' schedule properties and the ownership of 3rd respondent of the plaint 'B' schedule property has been revealed only in the written statement filed by respondent Nos.1 and 2, I am of the opinion that the petitioner was justified in trying to implead 3rd respondent as a party to the suit proceeding. It may be that in the plaint as originally filed, no allegation has been made against 3rd respondent, but the fact remains that 3rd respondent is alleged to be the owner of plaint 'B' schedule property, of which the petitioner was admittedly a tenant at a particular point of time. Since 3rd respondent is also interested in a portion of the plaint schedule property, in respect of which relief has been sought by petitioner, and since the petitioner is now contending that 3rd respondent is also instrumental in violating the interim

order passed by the Court below, I am of the opinion that she is necessary and proper party to the suit.

15. In this view of the matter, I am of the view that the order

dt.15-10-2012 in I.A.No.219 of 2012 in O.S.No.555 of 2011 of the

I Additional Junior Civil Judge, Visakhapatnam is unsustainable. It is accordingly set aside.

16. Accordingly, the Civil Revision Petition is allowed and I.A.No.219 of 2012 in O.S.No.555 of 2011 of the I Additional Junior Civil Judge, Visakhapatnam is also allowed. No costs.

17. Since the suit is of the year 2011, the Court below shall endeavour to dispose of the suit expeditiously preferably within a period of six 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: 24-06-2015

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