

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.282 OF 2013

DATED 17th APRIL, 2015

Between:

Avula Sudhakar

.. Petitioner

and

Valupadasu Raju and others

.. Respondents

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.282 OF 2013

ORDER

The petitioner is the plaintiff in O.S.No.911 of 2012 on the file of the learned II Additional Junior Civil Judge, Warangal. He is aggrieved by the order dated 04.01.2013 passed in I.A.No.1401 of 2012 filed in the said suit by the first respondent herein under Order 1 Rule 10 CPC seeking to be brought on record as a defendant. By the order under revision, the Court below allowed the I.A. and directed the plaintiff to add him as defendant No.14 in the suit. Though the first respondent in the CRP, being the petitioner in I.A.No.1401 of 2012 in O.S.No.911 of 2012, entered appearance through Sri B.V.Vijaya Bhaskar, Advocate, the learned counsel did not choose to appear before this Court though the matter was adjourned time and again to enable him to do so. The matter was directed to be posted for orders on 13.03.2015 and even thereafter so that the learned counsel would appear and advance his arguments but despite the same, he did not choose to do so. This Court is therefore constrained to dispose of the matter after hearing the arguments of Sri P. Mehar Srinivasa Rao, learned counsel for the petitioner/plaintiff, and upon perusing the material on record.

The suit, O.S.No.911 of 2012, was filed for a permanent injunction against the 13 named defendants. While so, the first respondent herein filed I.A.No.1401 of 2012 in the said suit seeking to be impleaded. It was his contention that his ancestors had purchased the suit schedule property under unregistered sale deeds between 1960 and 1964 from the original pattedars, Gattu Kistaiah and his family members. He claimed that after the death of his father, he remained in possession and enjoyment of the suit property and that the revenue records also reflected

his name. He alleged that the plaintiff in the suit had filed a caveat petition against him but for reasons best known to him, he had avoided adding him as a party to the subject suit and he was therefore a proper and necessary party.

Admittedly, no documents were produced by the first respondent herein in support of his claim. Despite the same, the Court below baldly opined that as he was asserting rights over the suit property under unregistered sale deeds and entries in revenue records, naturally he has to be added as a party and that he would have substantial grounds to oppose the plaintiff's suit. The Court below further opined that the factum of the plaintiff having filed a caveat petition against him suggested that there was a cause of action for him to implead him as a party to the suit and that it would not be possible to render an effective judgment in his absence.

The above reasoning of the Court below defies logic. The suit was admittedly filed by the plaintiff for a permanent injunction against the named defendants. Any decree passed therein would only bind them or their agents and not a third party or a stranger. As per the stand put forth by the first respondent herein in I.A.No.1401 of 2012 in O.S.No.911 of 2012, he was not claiming under any of the named defendants and asserted an independent claim over the suit property. He would therefore not be bound by any decree passed in the said suit. When the plaintiff asserted that he did not wish to make him a party to the suit, it was not for the Court below to force upon him another defendant whom he did not wish to proceed against. On the given facts, this Court is unable to concur with the opinion expressed by the Court below that the first respondent herein, being the petitioner in I.A.No.1401 of 2012 in O.S.No.911 of 2012, was a proper and necessary party to the suit and that no effective adjudication could be rendered in his absence. Further, without any documents being produced in support of his claim, the Court below ought not to have blindly believed the version put forth by the first respondent herein. Significantly, the Court below also ignored the settled

principle that the plaintiff in a suit, being the *dominus litus*, would enjoy a free hand in not only couching the relief claimed by him in the suit but also the parties against whom he wishes to proceed. Further, as rightly pointed out by Sri Mehar Srinivas Rao, learned counsel, the lack of application of mind by the Court below is also evident from the fact that the cause title in the order under revision does not even pertain to the subject case.

Thus, for reasons more than one, this Court is of the considered opinion that the Court below erred in applying the provisions of Order 1 Rule 10 CPC in the instant case and erroneously impleaded the first respondent herein as a party to the suit. The said order is accordingly set aside.

The CRP is allowed. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

17th APRIL, 2015

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