

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.4846 of 2014

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India questioning the Order dt.16-10-2014 in I.A.No.457 of 2014 in O.S.No.120 of 2014 of the Principal Junior Civil Judge, Proddatur.

2. The petitioners herein are plaintiffs in the above suit. The said suit was filed by the petitioners seeking a permanent injunction restraining 13th respondent herein/sole defendant in the suit from in any way interfering with the peaceful possession and enjoyment of the plaint schedule property which is a brick wall with a foundation of cement beam up to the height of 5' with a width of 9" and length of 184 ½' situated near the Nadimpalli street of Proddatur Municipality.
3. In the plaint, the petitioners alleged that they erected this wall since the adjacent owners on the eastern side are bent upon knocking away the common property of the petitioners and others; that the adjacent owners constructed residential houses towards east of the suit schedule wall, that they kept quiet till the completion of the suit schedule wall and are now making hectic efforts through the 13th respondent/sole defendant highhandedly to demolish the wall without any manner of right whatsoever. The petitioners alleged that the wall was constructed by them within their exclusive site and the 13th respondent/defendant is yielding to the pressure of the adjacent owners who are attempting to demolish the said wall. The 13th respondent/sole defendant has not filed the written statement as of date.

4. The respondent Nos.1 to 12 filed I.A.No.457 of 2014 under Order 1 Rule 10 (2) CPC to implead them as parties in the suit contending that their presence in the suit would assist the Court in better appreciation of the issues involved therein. They admit that the petitioners had raised the subject wall but contend that respondent Nos.1 to 12 have houses and house sites on the eastern side of the disputed wall raised by the petitioners and that the petitioners had no exclusive claim on the west of the disputed wall to file the suit. They also contend that the said wall is constructed on a C.C. road laid by the sole defendant-Municipality, that they had approached the defendant Municipality and were agitating to take steps against the petitioners, and that their rights are also involved on either side of the disputed wall along with those of the petitioners.
5. The petitioners filed a counter opposing the said application contending that the respondent Nos.1 to 12 are all interrelated; petitioners had constructed the wall to the knowledge of the respondent Nos.1 to 12 and the respondent Nos.1 to 12 have no right to come on record and dispute the legitimate right of the petitioners over the subject property. It is also contended that if the respondent Nos.1 to 12 have any right, they are at liberty to work out their remedies against the petitioners in separate proceedings; respondent Nos.1 to 12 cannot compel the petitioners to add them as parties against the wishes of the petitioners; and that the cause of action for the petitioners is only against the sole defendant-Municipality.
6. By Order dt.16-10-2014, the Court below allowed I.A.No.457 of 2014. It held that normally in a suit for permanent injunction

impleading all parties as defendants against whom the plaintiffs are not seeking any relief is not done, but, in the light of the pleading of the petitioners in their plaint (that at the instance of land owners on the eastern side of the wall, the sole defendant is attempting to demolish the wall), the respondent Nos.1 to 12 who are such adjacent owners on the eastern side of the wall, are proper parties and they ought to be impleaded as defendants in the suit. It held that although the petitioners were aware that the respondent Nos.1 to 12 were interested in disputing the suit wall, they did not add them as parties in the suit and they are necessary parties to the suit.

7. Questioning the same, this Revision Petition is filed.
8. The learned counsel for petitioners contends that the order of the Court below is erroneous and the Court below committed error of jurisdiction in impleading the respondent Nos.1 to 12 as defendants in the suit. He contended that the relief claimed in the suit is only for perpetual injunction against the sole defendant Municipality; that the cause of action pleaded in the plaint is only against the sole defendant; and that since the petitioners are *dominus litus*, the petitioners have the choice to choose the party against whom they want relief in the suit and they cannot be compelled to litigate against strangers. He also contended that by adding the respondent Nos.1 to 12, the entire nature of the suit gets changed and issues which are not relevant for the main suit would crop up. He contended that if the respondent Nos.1 to 12 have any grievance or cause of action, they can file a separate suit seeking appropriate relief both against the petitioners as well as respondent-Municipality.

9. The learned counsel for respondent Nos.1 to 12 on the other hand contended that in paras 5 and 6 of the plaint, the petitioners had raised the specific contention that the adjacent owners on the eastern side are bent on knocking away the common property of the petitioners and others; that they had therefore constructed the disputed wall; through the sole defendant Municipality, an attempt is being made by them to highhandedly demolish the wall; and since the respondent Nos.1 to 12 are those adjacent owners referred to in the plaint, they were rightly impleaded as parties in the suit. He also contended that the petitioners had laid the wall across a C.C. road laid by the sole defendant with public funds and that respondent Nos.1 to 12 have rights on either side of the disputed wall and the petitioners have no exclusive claim on the land to the west of the disputed wall, to file the suit.

10. Order 1 Rule 10 (2) CPC states as follows:

‘10. Suit in name of wrong plaintiff:

(1)

(2) Court may strike out or add parties--The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

11. The above provision enables impleadment of parties in a suit provided their presence is necessary in order to enable the Court to effectually and completely adjudicate upon and settled all the questions involved in the suit. As a matter of law, it cannot

be disputed that the plaintiff is the *dominus litus* and he has a choice to decide against whom he wants relief.

12. In **Kasturi Vs. Iyyamperumal and others**, the Supreme Court held that in a suit for specific performance of contract, persons claiming independent title and possession adversely to title of vendor are not necessary parties. In para 18, it observed:

“18. That apart, there is another principle which cannot also be forgotten. The appellant, who has filed the instant suit for specific performance of the contract for sale is dominus litis and cannot be forced to add parties against whom he does not want to fight unless it is a compulsion of the rule of law, as already discussed above. For the reasons aforesaid, we are, therefore, of the view that Respondents 1 and 4 to 11 are neither necessary parties nor proper parties and therefore they are not entitled to be added as party-defendants in the pending suit for specific performance of the contract for sale.”

13. Admittedly, the pleadings in the suit indicate that the threat to the petitioners is only from the sole defendant Municipality and although it is alleged that the owners of property on the eastern side of the wall have instigated the Municipality, the petitioners/plaintiffs have not chosen to seek any relief against the respondentNos.1 to 12.

14. It may be that the respondent Nos.1 to 12 claim to have an interest in the removal of the subject wall and also an interest in the land which is on the west of the said wall either exclusively or jointly with the petitioners. To implead the respondent Nos.1 to 12 as parties in the suit would convert the suit for bare injunction into a suit where the right, title and interest of the respondent Nos.1 to 12 would also have to be gone into and thus widen the scope of the suit. The petitioners, who are *dominus litus*, cannot be compelled the litigate against the respondent Nos.1 to 12 in a

suit of this nature when their grievance is only against the sole defendant Municipality. Also if the respondent Nos.1 to 12 are impleaded, they would be able to get an adjudication of their right, title and interest in the area to the west of the subject wall without having paid any Court Fee in that regard and without even going to the Court about their claim by way of a separate suit. It is not the case of the respondent Nos.1 to 12 that they were prevented from going to Court for seeking a declaration of their right, title and interest in respect of the land to the west of the said wall or for the removal of the wall constructed by the petitioners by way of a mandatory injunction.

15. Having regard to the above reasons, I am of the opinion that the Court below ought not to have impleaded the respondent Nos.1 to 12 as defendants in the suit when the petitioners are opposing such impleadment merely on the ground that there is a pleading in respect of the instigation by the respondent Nos.1 to 12 in the plaint filed by the petitioners.
16. In this view of the matter, I am of the opinion that the Order of the Court is vitiated by error in the exercise of jurisdiction vested in it and is liable to be set aside.
17. In the result, the Civil Revision Petition is allowed and the Order dt.16-10-2014 in I.A.No.457 of 2014 in O.S.No.120 of 2014 of the Principal Junior Civil Judge, Proddatur is set aside. Liberty is given to the respondent Nos.1 to 12 to file a separate suit seeking appropriate relief against the petitioners as well as respondent

No.13-Municipality. No costs.

18. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 13-03-2015

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