

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

C.R.P.No.573 of 2015

ORDER:

Heard Sri G. Pedda Babu, learned counsel for the petitioner, Sri M.K.Rajkumar, learned counsel for 1st respondent and Sri R.Prasad, learned counsel for 2nd respondent.

2. This Revision Petition is filed under Art.227 of the Constitution of India challenging the order dt.02-07-2013 in I.A.No.67 of 2013 in O.S.No.27 of 2006 of the Senior Civil Judge, Avanigadda.

3. Petitioner herein is 2nd defendant in the said suit. The above suit was filed by 2nd respondent herein against the petitioner and respondent Nos.3 to 22 for specific performance of agreement of sale dt.22-09-1983 executed by 3rd respondent herein.

4. The 1st respondent herein filed I.A.No.67 of 2013 under Order 1 Rule 10 CPC to get impleaded in the said suit. He alleged that 3rd respondent had executed agreement of sale dt.04-09-1978 in favour of one P.Tata Rao, father of 1st respondent in respect of extent of Ac.5.52 cts of dry land which is the same property which is subject matter of O.S.No.27 of 2006; and under a Will dt.10-11-2005 executed by his father Tata Rao, who died

on 27-12-2006, he succeeded to the estate of his father; that he had already filed O.S.No.14 of 2008 against respondent no.22 who is the legal heir of 3rd respondent and obtained a decree on 26-06-2008; and that he had also filed E.P.No.18 of 2008 therein which is pending. He further contended that two third parties i.e. respondent Nos.4 and 5 herein had filed claim petitions E.A.Nos.4 and 5 of 2011 in E.P.No.18 of 2008 in O.S.No.14 of 2008 claiming part of the suit schedule property and that he then came to know about the agreement of sale allegedly executed by third respondent in favour of 2nd respondent. He therefore prayed that should be impleaded in the suit O.S.No.27 of 2006 filed by 2nd respondent against 3rd respondent and others.

5. Counter affidavit was filed by 2nd respondent opposing the impleadment.

6. The petitioner also filed a counter opposing I.A.No.67 of 2013 and contending that the alleged agreement of sale dt.04-09-1978 set up by 1st respondent in favour of his father late Tatarao was a forged one. He alleged that it must have been brought into existence collusively by 1st respondent and 22nd respondent who is the legal heir of 3rd respondent. It was also contended that if 1st respondent had any rights, they cannot be decided in O.S.No.27 of 2006 and he should file a

separate suit against the respondent Nos.4 to 22, and he is not a necessary and proper party to the suit.

7. By order dt.02-07-2013, the said I.A.No.67 of 2013 was allowed by the Court below. It held that 1st respondent was a necessary party to the suit since he is also claiming right under a non-possessory agreement of sale in respect of the plaint schedule property which is subject matter of O.S.No.27 of 2006, and since he was contending that the said agreement of sale was executed by 3rd respondent in favour of his father and had also obtained an *ex parte* decree therein, if he is impleaded, the 1st respondent would also be bound by the result of the suit. The Court below also noted that 2nd respondent had in fact filed O.S.No.28 of 2009 against 1st respondent and another to cancel *ex parte* decree in O.S.No.14 of 2008 and the said suit is pending.

8. Challenging the same, this Revision Petition is filed by the petitioner/2nd defendant.

9. Learned counsel for the petitioner contended that the Court below had erred in allowing the implead application filed by 1st respondent. He also stated that a claim petition filed by 5th respondent in E.A.No.5 of 2010 in E.P.No.18 of 2008 in O.S.No.14 of 2008 had been allowed on 09-07-2015 by the I Additional District Judge, Krishna at Machilipatnam and

since 1st respondent had failed to obtain registered sale deed in the said E.P. even though he had an *ex parte* decree in O.S.No.14 of 2008 in his favour. He further contended that the suit being one for specific performance, third parties like 1st respondent cannot be allowed to be impleaded. He relied on the decisions in **Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd. and others**^[1], **Vidur Impex and Traders Pvt. Ltd and others Vs. Tosh Apartments Pvt. Ltd and others**^[2] and **Thomson Press (India) Ltd Vs. Nanak Builders and Investors Pvt. Ltd. and others**^[3].

10. Learned counsel for 1st respondent however refuted the above contentions and pointed out that the petitioner, who is 2nd defendant in the suit, cannot be said to be aggrieved by the impugned order and that if any objection in this regard is to be raised, it is for the 2nd respondent/plaintiff who had filed the suit O.S.No.27 of 2006 to challenge it. He contended that the Court below had given cogent reasons for impleading 1st respondent and that no exception can be taken to it.

11. Learned counsel for 2nd respondent/plaintiff contended that no doubt, the 2nd respondent had opposed I.A.No.67 of 2013 for impleadment of 1st

respondent in the Court below, but having regard to the fact that the same property was subject matter of O.S.No.27 of 2006 as well as in O.S.No.14 of 2008, the 2nd respondent/plaintiff is convinced that the impleadment of 1st respondent in O.S.No.27 of 2006 is necessary, and that was why the 2nd respondent has not chosen to challenge the order passed by the Court below in I.A.No.67 of 2013. He further contended that although the I Additional District Judge, Krishna at Machilipatnam had allowed E.A.No. 5 of 2011 in E.P.No.18 of 2008 in O.S.No.14 of 2008 filed by 5th respondent, the same had been challenged in a Revision before this Court and is pending. He therefore contended that the petitioner cannot place any reliance on the order dt.09-07-2015 in E.A.No.5 of 2010.

12. I have noted the submissions of both sides.

13. Order I Rule 10 (2) CPC permits adding of parties at any stage of the suit if the Court is of the opinion that such person ought to have been joined or if the Court feels that his presence is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit.

14. In **Ramesh Hirachand Kundanmal v. Municipal Corpn. of Greater Bombay**^[4], the Supreme Court held that notwithstanding the fact that a plaintiff is a

dominus litis, the Court may at any stage of the suit direct addition of parties. It held:

“5. It was argued that the Court cannot direct addition of parties against the wishes of the plaintiff who cannot be compelled to proceed against a person against whom he does not claim any relief. Plaintiff is no doubt dominus litis and is not bound to sue every possible adverse claimant in the same suit. He may choose to implead only those persons as defendants against whom he wishes to proceed though under Order 1 Rule 3, to avoid multiplicity of suit and needless expenses all persons against whom the right to relief is alleged to exist may be joined as defendants. However, the Court may at any stage of the suit direct addition of parties. A party can be joined as defendant even though the plaintiff does not think that he has any cause of action against him. Rule 10 specifically provides that it is open to the Court to add at any stage of the suit a necessary party or a person whose presence before the Court may be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit.

6. Sub-rule (2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touchstone of Order 1 Rule 10 which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of

the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case.

7. The respondents do not seriously dispute the position that respondent 2 is not a necessary party to the suit in the sense that without their presence an effective order cannot be passed. However, they support the view that respondent 2 is a proper party whose presence is necessary for a complete adjudication on the controversy. In the light of the clear language of the rule, it is not open to the appellant to contend that a person cannot be added as defendant even in a case where his presence is necessary to enable the Court to decide the matter effectively.”

15. In **Mumbai International Airport Pvt. Ltd.** (1 supra), while dealing with a prayer for impleadment in a suit for specific performance, the Supreme Court held that the exercise of power under Order I Rule 10 (2) CPC is a matter of judicial discretion and the Court has to act according to reason and fair play and not according to whims and caprice. It observed in para 12.1 to 12.4 in para-12 as follows:

“12.1) If a plaintiff makes an application for impleading a person as a defendant on the ground that he is a necessary party, the court may implead him having regard to the provisions of Rules 9 and 10(2) of Order 1. If the claim against such a person is barred by limitation, it may refuse to add him as a party and even dismiss the suit for non-joinder of a necessary party.

12.2) If the owner of a tenanted property enters into an agreement for sale of such property without physical possession, in a suit for specific performance by the purchaser, the tenant would

not be a necessary party. But if the suit for specific performance is filed with an additional prayer for delivery of physical possession from the tenant in possession, then the tenant will be a necessary party in so far as the prayer for actual possession.

12.3) If a person makes an application for being impleaded contending that he is a necessary party, and if the court finds that he is a necessary party, it can implead him. If the plaintiff opposes such impleadment, then instead of impleading such a party, who is found to be a necessary party, the court may proceed to dismiss the suit by holding that the applicant was a necessary party and in his absence the plaintiff was not entitled to any relief in the suit.

12.4) If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bonafides etc., the court will normally implead him, if he is found to be a proper party. On the other hand, if a non-party makes an application seeking impleadment as a proper party and court finds him to be a proper party, the court may direct his addition as a defendant; but if the court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit; or the court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms. For example, if 'D' claiming to be a co-owner of a suit property, enters into an agreement for sale of his share in favour of 'P' representing that he is the co-owner with half share, and 'P' files a suit for specific performance of the said agreement of sale in respect of the undivided half share, the court may permit the other co-owner who contends that 'D' has only one-fourth share, to be impleaded as an additional defendant as a proper party, and may examine the issue whether the plaintiff is entitled to specific performance of the agreement in respect of half a share or only one-fourth share; alternatively the court may

refuse to implead the other co-owner and leave open the question in regard to the extent of share of the vendor-defendant to be decided in an independent proceeding by the other co-owner, or the plaintiff; alternatively the court may implead him but subject to the term that the dispute, if any, between the impleaded co-owner and the original defendant in regard to the extent of the share will not be the subject matter of the suit for specific performance, and that it will decide in the suit, only the issues relating to specific performance, that is whether the defendant executed the agreement/contract and whether such contract should be specifically enforced. In other words, the court has the discretion to either to allow or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party, merely because he is a proper party.”

16. It thus indicated that in some circumstances in a suit for specific performance even a tenant or a co owner can be impleaded. It however held that a person who expects to get a lease from a defendant in a suit for specific performance in the event of the suit being dismissed cannot be said to be a person having some semblance of title in the property in dispute.

17. In **Vidur Impex and Traders Pvt. Ltd and others**

(2 supra), the Supreme Court considered this above judgment and observed that in a suit for specific performance, Court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his

acquiring knowledge about the pending litigation. The Court however held that if the applicant is guilty of contumacious conduct, or is beneficiary of a clandestine transaction, or a transaction made by the owner of the suit property in violation of the restraint order passed by the Court, or the application is unduly delayed, then the Court will be fully justified in declining the prayer for impleadment.

18. In **Thomson Press (India) Ltd** (3 supra), the Supreme Court held that a subsequent purchaser of a property with knowledge of earlier agreement of sale can be added as a party in a suit for specific performance.

19. In the present case, the learned counsel representing 2nd respondent has categorically stated that his client has no objection to the impleadment of the 1st respondent as a party in O.S.No.27 of 2006, having regard to the fact that the subject matter of the suit O.S.No.27 of 2006 is the subject matter of O.S.No.14 of 2008 on the file of the I Additional District Judge, Machilipatnam in which 1st respondent had obtained an *ex parte* decree against 3rd respondent, and also having regard to the fact that 2nd respondent had questioned the said decree in O.S.No.28 of 2009 before the X Additional District Judge, Machilipatnam. According to the said counsel, it would help 2nd respondent to obtain

appropriate orders. It could also bind 1st respondent in the event the 2nd respondent were to succeed in O.S.No.27 of 2006.

20. The crucial point to be noted is that the plaintiff in O.S.No.27 of 2006, who is impleaded as 2nd respondent in this Revision, has no objection to the impleadment of 1st respondent herein as 22nd defendant in the said suit although in the Court below no doubt a counter was filed opposing the impleadment of 1st respondent. The 2nd respondent being the plaintiff is admittedly the *dominus litis*.

21. Having regard to the principles laid down in **Mumbai International Airport Pvt. Ltd.** (1 supra) and having regard to the stand taken by 2nd respondent in this Revision/plaintiff in O.S.No.27 of 2006, I am of the opinion that the Court below was correct in impleading 1st respondent as 22nd defendant in the suit. When the 2nd respondent/plaintiff has no objection to such impleadment, it is not open to the petitioner, who is the 2nd defendant in O.S.No.27 of 2006, to object to the impleadment of 1st respondent therein.

22. Although the learned counsel for the petitioner sought to contend that there is a delay of four years in filing the application for impleadment on the part

of 1st respondent, since according to 1st respondent, only when the evidence was let in E.A.No.5 of 2011 in E.P.No.18 of 2008 in O.S.No.14 of 2008, the Written Statement filed by the deceased 3rd respondent was placed on record, and then only he came to know about the said fact, and that 3rd respondent had concealed the sale agreement in favour of 1st respondent and filed that Written Statement, I am of the opinion that the delay is not such as to deprive the 1st respondent of the right to get impleaded in O.S.No.27 of 2006.

23. I am also of the opinion that the petitioner cannot place much reliance of the order dt.09-07-2015 in E.A.No.5 of 2010 in E.P.No.18 of 2008 in O.S.No.14 of 2008 passed by the I Additional District Judge, Krishna at Machilipatnam having regard to the fact that the said order is admittedly challenged in a Revision pending before this Court and has not attained finality.

24. Although the learned counsel for the petitioner also sought to contend that the theory of *dominis litis* should not be over stretched and relied upon the decision in **Committee of Management, Ratan Muni Jain Inter College and another Vs. III Additional Civil Judge, Agra and others**^[5], I am of the considered view that in the facts and circumstances of the case when the 2nd respondent, who is a plaintiff, has in fact no objection

to the impleadment of 1st respondent, it is not open to the petitioner who is the 2nd defendant in the suit to object to the impleadment of the 1st respondent.

25. I therefore do not find any error of jurisdiction or other infirmity in the order passed by the Court below warranting interference with the impugned order. Consequently, the Civil Revision Petition is dismissed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 27-10-2015

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[\[1\]](#) AIR 2010 S.C. 3109

[\[2\]](#) AIR 2012 S.C. 2925 (1)

[\[3\]](#) AIR 2013 S.C. 2389

[\[4\]](#) (1992) 2 SCC 524

[\[5\]](#) AIR 1995 Allahabad 7