

THE HON'BLE SRI JUSTICE A.V. SESA SAI

C.R.P.No.3494 of 2014

ORDER:

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Third parties for O.S.No.21 of 2008 on the file of the Family Court, Karimnagar, are the petitioners in the present revision, filed under Article 227 of the Constitution of India. This revision assails the order dated 26-09-2014 passed by the said Court, dismissing I.A.SR.No.2934 of 2014, filed by the petitioners herein, under the provisions of Order I Rule 10 of the Code of Civil Procedure, seeking their impleadment, as defendant Nos. 9 and 10 in the suit.

Heard Sri J. Kanakaiah, learned counsel for the petitioners and Sri V. Ravi Kiran Rao, learned counsel for the 1st respondent, apart from perusing the material available on record.

The 1st respondent herein instituted the suit against respondents 2 to 9 for specific performance of contracts of sale. In the said suit, the petitioners filed an application under Order I Rule 10 C.P.C., seeking their impleadment as defendants 9 and 10. The learned Judge, by way of an order dated 29-09-2014, dismissed the said application at the SR stage. Calling in question the legal acceptability of the order passed by the Court below, the present revision has been filed.

Sri J. Kanakaiah, the learned counsel for the petitioners submits that the order passed by the Court below is erroneous, contrary to law and is opposed to the very spirit and object underlying the provisions of Order I Rule 10 C.P.C. He contends that the proposed defendants

are the legal heirs of late P. Saibaba and they are also the shareholders of the property in question.

He further contends that the 1st respondent instituted the suit without adding all the successors of late Sri P. Saibaba. Learned counsel submits that the judgment on which, the learned Judge relied upon, has no relevance to the facts of this case. He further submits that the intention of the petitioners to implead themselves in the suit is only to get their shares protected. In support of his contention, the learned counsel relied upon the judgment of the Apex Court in **Mumbai International Airport Pvt. Ltd v. Regency Convention Centre & Hotels Pvt. Ltd and others**^[1].

Per contra, it is vehemently contended by Sri V. Ravi Kiran Rao, learned counsel for the plaintiff/1st respondent herein that the Court below correctly dismissed the application filed by the petitioners herein and there is no illegality, nor any jurisdictional error in the impugned order as such the present revision is not maintainable under Article 227 of the Constitution of India.

He submits that the present application filed by the petitioners is a deliberate attempt to protract the litigation, and there are absolutely no *bona fides* on the part of the petitioners. In support of his contention, learned counsel relied upon the judgments in **Kasturi v. Iyyamperumal**^[2] and **Devaram and others v. Additional District Judge, Deewana**^[3].

In the above background, now the issue, which this Court is called upon to answer in the present revision is, whether the order passed by the Court below is sustainable and tenable or whether the

same requires any correction by this Court, in exercise of its power conferred under Article 227 of the Constitution of India.

A perusal of the material available before this Court discloses that, there is absolutely no dispute that the petitioners herein are the wife and daughter of late Sri Saibaba, and there is also no dispute with regard to the fact, even as per the plaint, that late Saibaba was one of the shareholders of the property in question. The material on record further discloses that late Saibaba died on 26-11-2007. Absolutely no explanation is forthcoming, as to why the petitioners herein are not arrayed as defendants in the suit. A perusal of the order passed by the Court below clearly discloses that the learned Judge dismissed the application filed by the petitioners herein by placing reliance upon the judgment of the Hon'ble Apex Court in **Mumbai International Airport Pvt. Ltd v. Regency Convention Centre & Hotels Pvt. Ltd and others** (1 supra). A reading of the order passed by the Court below further shows that the learned Judge did not take into consideration any of the averments made in the application filed by the petitioners herein and the law laid down by the Apex Court in the judgment referred to above. Paragraphs 12 to 13 of the said judgment read as under:

12. Let us consider the scope and ambit of Order 1 of Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo moto or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to

such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice. This Court in *Ramji Dayawala & Sons (P) Ltd. v. Invest Import* 1981 (1) SCC 80 reiterated the classic definition of 'discretion' by Lord Mansfield in *R. v. Wilkes* 1770 (98) ER 327 that 'discretion' when applied to courts of justice, means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague, and fanciful, 'but legal and regular'. We may now give some illustrations regarding exercise of discretion under the said Sub-Rule.

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.

13. If the principles relating to impleadment, are kept in view, then the purported divergence in the two decisions will be found to be non-existent. The observations in *Kasturi* and *Sumtibai* are with reference to the facts and circumstances of the respective case. In *Kasturi*, this Court held that in suits for specific performance, only the parties to the contract or any legal representative of a party to the contract, or a transferee from a party to the contract are necessary parties. In *Sumtibai*, this Court held that a person having semblance of a

title can be considered as a proper party. Sumtibai did not lay down any proposition that anyone claiming to have any semblance of title is a necessary party. Nor did Kasturi lay down that no one, other than the parties to the contract and their legal representatives/transferees, can be impleaded even as a proper party.

In the present revision, it is the case of the petitioners herein that there is collusion between the plaintiff and the 1st defendant in the suit. The Court below without even numbering the I.A., passed the impugned order, without completely considering the averments made in the application, nor the law laid down by the Apex Court in the judgment referred to above.

In the considered opinion of this Court, the mode and manner in which the learned Judge below has dealt with the issue cannot be said to be just and reasonable. In the circumstances, this Court is inclined to remand the matter to the Court below for consideration of the issue afresh, after giving opportunity to all the stakeholders.

For the foregoing reasons, the revision is allowed, setting aside the order dated 26-09-2014, passed by the Family Court, Karimnagar in I.A.SR.No.2934 of 2014 in O.S.No.21 of 2008.

The matter is remitted back to the Court below for consideration afresh. It is, however, directed that the Court below shall dispose of the matter, in accordance with law, by giving opportunity to all the stakeholders, within a period of one month from the date of receipt of a copy of this order.

There shall be no order as to costs.

A.V. SESA SAI, J.

Dt.11-02-2015.

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[\[1\]](#) 2010(5) ALD 24 (SC)

[\[2\]](#) AIR 2005 SC 2813= 2005(3)ALD 83 (SC)

[\[3\]](#) AIR 2008 Rajasthan 174