

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

C.R.P. No.407 of 2016

ORDER :

The revision petition is maintained by the plaintiffs six in number in O.S. No.158 of 2009 on the file of XIII Additional District Judge, Vijayawada impugning the order of the learned District Judge supra dated 09.09.2015 in I.A. No.734 of 2015 on the application filed by the revision-1st respondent to come on record under Order I Rule 10 C.P.C as 6th defendant with a claim that he purchased the plaint schedule property from the 5th defendant pending the suit under registered sale deed dated 30.04.2014 and to protect his rights is a necessary party to the suit and on contest by the revision petitioners as plaintiffs/ respondents in opposing the same of the so called sale transaction is hit by doctrine of lis pendency even and the right is subject to result of the suit, thereby cannot come on record muchless to participate that too (when the defendants 1 to 5 are contesting the matter by engaging an advocate) among the defendants 1 to 5, particularly the 5th defendant (R-11 to the implead petition) by engaging advocate contesting the matter, the lower Court by the impugned order held that he is a necessary party in the case for disposal of the suit and by

impugning the same. The contentions in the grounds of revision vis-à-vis the oral submissions by the learned counsel for the revision petitioner is that the order of the lower Court is erroneous outcome by ill-appreciation of facts and law and when the suit trial already in progress, any third parties' impleadment consequently results in amendment of the plaint cause title and pleadings of the plaintiff even and plaintiff cannot be forced to do so for even proved the alleged purchase his rights are subject to result of the lis and thereby sought for setting aside the order of the lower Court by allowing the revision.

2) Whereas it is the submission of the learned counsel for the implead petitioner that the order of the lower Court is just and sustainable in law and for this Court while sitting in revision there is nothing to interfere.

3) Heard and perused the material on record.

4) In *Ramesh Hiranand Kundanmal V. Municipal Corporation of Greater Bombay*¹ (2JB) expression of the Apex Court holds that there is a distinction between necessary and proper party to the suit and to implead a person, there must be a direct interest in the subject matter of the litigation. In the absence of which the mere fact that

¹ (1992)2 SCC 524

a fresh litigation can be avoided is no ground to invoke Order I Rule 10 C.P.C. and coming to the facts, where the Municipal Corporation issued notice for demolition of structures of the leasehold premises, alleging unauthorized construction and in view of the same, the observation of the appellant lessee is a necessary party is held unsustainable. In *Sarvinder Singh V. Dalip Singh*² in a suit for declaration, the proposed party wants to come on record as alienee, the transaction is hit by Section 52 of the Transfer of Property Act that too in the pending suit there is no permission of Court to alienate, the proposed party is held neither necessary nor proper party to the suit by referring to *Ramesh Heerachand* supra.

5) In *Vijay Pratap*³ the suit for specific performance of the contract, there was a compromise entered by the respondent seeking to delete his name, some of the respondents want to come on record when dismissed the application saying neither necessary nor proper parties, it was held that once there is a relinquishment by the father of his property equally bind the sons who cannot thereby come on record. In *Mumbai International Airport Private Limited V. Regency Convention Centre and Hotels Private*

² (1996)5 SCC 539

³ AIR 1996 SC 2755

*Limited*⁴ it was held in considering who is proper and who necessary party to the lis referring to the earlier expressions of the Apex Court in *Sumathibai V. Paras Finance Co.*⁵ referring to *Kasturi V. Iyyamperumal*⁶ referring to the general rule that plaintiff being *dominus litis*, he may choose against the persons to whom he wishes to litigate and cannot be compelled to sue a person against him, he does not seek any relief; consequently a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to Order I Rule 10(2) C.P.C which provides impleadment of any proper or necessary parties within the judicial discretion of the Court. A proper party is a person who though not a necessary party, whose presence would enable the Court to completely, affectively and adequately adjudicate upon the matters in dispute that he need not be a person in favour or against whom the decree is to be made. Court cannot exercise discretion when any person is neither necessary nor proper party. Each case depends on own facts and even a little difference in facts make a lot of difference in the precedential value of a decision and that even a single significant detail may alter the entire aspect. If the Court finds that addition of a party who is not necessary but

⁴ (2010)7 SCC 417

⁵ (2007)10 SCC 82

⁶ (2005)6 SCC 733

proper party, will alter the nature of suit or introduce new cause of action, the Court may not permit to widen the scope of the lis though otherwise Court got discretion, depending upon the facts and circumstances to implead even a proper party.

6) Even from the above expressions so far as the claim of the revision 1st respondent as petitioner before the lower Court to come on record concerned, he is a lis pendency purchaser from 5th defendant. He got no independent right but for claiming through 5th defendant. 5th defendant is contesting the matter. Thereby, even by impleadment he cannot have any better contest but for to step into the shoes of the 5th defendant and to continue the defence raised by the 5th defendant and to that extent ultimately in the suit relief to grant if at all against the 5th defendant equally against the proposed defendant, he is though not necessary being a proper party. Thus, once trial Court exercised the discretion for this Court while sitting in revision, there is nothing to interfere but for to clarify that by virtue of the impleadment pursuant to the order of the lower Court, but for adopting the written statement of the 5th defendant, the petitioner as 6th defendant cannot have any independent right to claim but for to give evidence pursuant to the defence of the 5th defendant as what he purchased pending

suit is subject to result of the suit and his transaction is hit by Section 52 of the Transfer of Property Act.

7) Accordingly and subject to the above observations, the revision is disposed of. There shall be no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

29.09.2016
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