

THE HON'BLE SRI JUSTICE S.V.BHATT
CIVIL REVISION PETITION No.3166 of 2016

ORDER:

Plaintiffs in O.S.No.28 of 2010 are the revision petitioners.

The revision is directed against the order dated 15.10.2015 in I.A.No.122 of 2014.

2. The first respondent filed I.A.No.122 of 2014 under Order I Rule 10 of Civil Procedure Code to implead the first respondent as defendant No.2 in O.S.No.28 of 2010. The request of first respondent to implead himself as one of the defendants was allowed, hence, the revision.

3. The revision petitioners filed O.S.No.28 of 2010 for specific performance of agreement of sale dated 11.02.2009 executed by Murahari Tyaga Raju/defendant No.1 (respondent No.1). The plaint schedule consists of the following property:

SCHEDULE

Property situated in Atmakur village within the
Sub-Registration, Atmakur District Registration Kurnool, Kurnool District.

<u>Survey No.</u>	<u>Extent</u>	<u>Cist</u>	<u>Name of the land</u>
15628	pyki Ac.4.00 cents.	Rs.4-00	Radhapuram Chenu.

Bounded by: East: Land of Yerukali Obulesu
West: Land of Thudicherla Lakshhmaiah
North: Temple Land
South: K.G. Road

4. The first respondent in I.A.No.122 of 2014 alleges that the association is the absolute owner of plaint schedule property.

Being the owner and perceiving threat to its right and title vis-à-vis petition schedule property from revision petitioners herein and the second respondent, the association is compelled to protect the plaint schedule property. According to first respondent, the suit is a collusive suit and based

upon fabricated documents. Hence, the prayer for impleading the first respondent as second defendant was made.

5. The revision petitioners have denied each and every one of the allegations in the affidavit in I.A.No.122 of 2014. It is stated that having regard to the totality of circumstances, the presence of first respondent is unnecessary for proper and effective disposal of O.S.No.28 of 2010.

6. The trial Court framed the following point for determination:

"The point for determination is whether the Petitioner/Third Party is a necessary party to the suit and thereby whether he is liable to be impleaded as Defendant No.2 in the suit?"

7. The trial Court held as follows:

10. In the above order copy filed by the Petitioner along with the Petition in O.P.No.3903/87, it is ordered in the operative portion in Page 83 *"In the result, entire compensation amount in respect of the acquired lands is ordered to be paid to the President, Nandyal Polam Telugu Baptist Sangamula Samajamu with Reg.No.13/71 and the compensation amount payable shall be deposited in the long terms fixed deposit in State Bank of India, Atmakur, in order to secure maximum rate of interest in the name of President and the monthly interest accrued therein shall be utilized for the management and maintenance of Telugu Baptist Churches located in Nandyal, Atmakur and Dhone. In case of any necessity for utilization of the principal amount arises or any clarification required, the President is at liberty to approach this Court for redressal."*

11. The above order shows in the references under Section 30 of L.A. act. The President herein has been declared as owner and ordered to receive the compensation relating to the lands acquired. It is best known to the Plaintiffs herein, if such is the case, how they entered into an agreement of sale with the Defendant herein.

12. In such course of things, record shows that the Petitioner herein is the necessary and proper party to the suit for just adjudication and determination of the suit. The Petitioner has also filed Photostat copy of the relevant page of Passbook.

It shows B. Nagaraju as President, G. Sudhakar as Secretary, S.No.1562/B an extent of Ac.6.24 cents, is shown the same member in possession by the Petitioner herein.

13. In the above circumstances, the Petitioner is a just and necessary party for just adjudication of the suit. Hence, the Petition under Order I Rule 10 of CPC is liable to be allowed. Hence, he can be impleaded as Defendant No.2 in the suit for just determination of

the suit, and accordingly the Points No.1 and 2 are answered in favour of the Petitioner and against the Respondents.”

8. Counsel for petitioners, by placing reliance upon the affidavit filed by the first respondent in I.A.No.122 of 2014, plaint allegations in O.S.No.28 of 2010 and the findings recorded by the trial Court, contends that the trial Court did not exercise the jurisdiction under Order I Rule 10 CPC in a proper way. The findings recorded on the necessity of first respondent's presence, as proper and necessary suffer from *ipsi dixit* consideration. It is further contended that the allegations in the affidavit *prima facie* show that the issue requires independent consideration of right and title of first respondent vis-à-vis the parties to present suit. These issues cannot be considered in the suit filed by revision petitioners for specific performance of agreement of sale dated 11.02.2009. It is further stated the second defendant is not claiming through the proposed defendant and therefore, the prayer virtually amounts to *misjoinder* of causes of action and expands the scope of enquiry far beyond the settled pleadings. If at all the first respondent has any grievance, the first respondent has to file independent suit against proper and necessary parties including the parties to the suit and work out the prayers.

9. Mr. P. Vengala Reddy, counsel for first respondent, tried to sustain the findings recorded by the trial Court. He draws the attention of the Court to the order in OP.No.3903 of 1987, apportionment of compensation in favour of proposed respondent and to prevent possible misuse of adjudication in O.S.No.28 of 2010 by the parties, the instant application under Order I Rule 10 CPC has been filed.

He alternatively submits that if the Court is not inclined to agree with the findings recorded by the trial Court, he requests the Court to clarify that being third party, both to the agreement and the *lis*, the adjudication in instant suit O.S.No.28 of 2010 shall not be put against or relied upon by either of the parties.

10. I have carefully perused the reasons recorded by the trial Court. The preceding para without reiteration would go to show that the presence of proposed party is neither necessary nor proper and findings are not founded on proper and correct consideration of fact and settled position of law. A look at the affidavit discloses that the first respondent is now confronted with an independent cause of action vis-à-vis the total array of parties in the instant suit. The presence of first respondent is not going to, in any manner, help the adjudication, on the other hand, unnecessarily expands the issue settled in the instant suit.

Having regard to all these circumstances and above consideration, this Court is of the view that the order impugned in the revision petition is unsustainable, set aside and the civil revision petition is allowed. It is made clear that the parties to the instant suit cannot and could not rely upon the adjudication against the right claimed by the first respondent association. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

S. V. BHATT, J

August 29, 2016
DSK