

**HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**C.R.P.No.3491 OF 2016**

**ORDER:**

This revision petition is filed under Article 227 of the Constitution of India challenging the order dated 26.04.2016 passed in I.A.No.249 of 2016 in O.S.No. 491 of 2016 by the VI Junior Civil Judge, City Civil Court, Hyderabad dismissing the petition filed under Order 1 Rule 10 of the Code of Civil Procedure.

2. The 1<sup>st</sup> respondent herein filed the above suit against the 2<sup>nd</sup> respondent challenging the notice issued under Sections 452(1) and 461(1) of the Hyderabad Municipal Corporation Act complaining construction of building in violation or in deviation of the approved plan.

3. The dispute between the plaintiff and defendant was limited since the question to be decided in a suit for bare injunction is: whether the municipality can be proceeded to take action in pursuance of the notice issued under Sections 452(1) and 461(1) of the HMC Act.

4. It is the apprehension of the petitioner that the property belongs to the joint family, but without knowledge of the petitioner, his brother-in-law sold away the entire property and taking advantage of the sale deed, the 1<sup>st</sup> respondent without obtaining any prior approval of plan from MCH constructing the building in question and in such a case, the remedy left open to the petitioner is elsewhere, but not in the present suit filed for injunction simplicitor where the dispute is with regard to the notice issued under Sections 452(1) and 461(1) of the HMC Act.

5. Order 1 Rule 10 C.P.C., which mandates for obtaining permission of the Court to implead any party, if the party is found to be either proper or necessary. To implead the petitioner himself as party to the suit filed for injunction simplicitor, he must establish as to how he is necessary or proper party. In one of the judgment's of this Court in **S.M.M. Jahangir Ali Khan v. Markazi Qutub Khana (Library), Mohammedia/Jamat-e-Ahle Hadees (Office), Hyderabad and another**<sup>1</sup>, this Court allowed the third party to come on record basing on the judgment of **Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay and others**<sup>2</sup>, but in the later judgment reported in **Mumbai International Airport Private Limited v. Regency Convention Centre and Hotels Private Limited and others**<sup>3</sup>, wherein the Apex Court in para Nos.13, 14 and 15 elaborately discussed as to who is the proper and necessary party. In para No.15, the principle laid down as follows:

*“ A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be proper or necessary party, the court has not jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a*

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<sup>1</sup> 2016(3) ALD 247

<sup>2</sup> (1992) 2 SCC 524

<sup>3</sup> (2010) 7 SCC 417

*necessary party or a property party to the suit for specific performance."*

6. In Para No.13 of the same judgment, the Apex Court held as follows:

" The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom 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 the provisions of Order I Rule 10(2) of Code of Civil Procedure ('Code' for short), which provides for impleadment of proper or necessary party".

7. In view of the principle laid down in the above judgment, in a suit filed by the plaintiff, owner of the house, against the G.H.M.C challenging the Notice issued under Section 452(2) of the 1955 Act, the question to be decided is whether the Notice under Section 452(2) of the 1955 Act is valid or not and if not, the constructions, if any, raised in deviation of the approved plan are liable to demolished or removed. But, here new facts based on sale of joint family property without consent of the petitioner is to be agitated by impleading the petitioner himself in a pending suit filed by the purchaser of property and constructed house plaintiff against GHMC. In a suit filed by the owner of the house, the rights of the 3<sup>rd</sup> parties, more particularly, ownership or right in immovable property cannot be decided. Therefore, the remedy open to the proposed party is to file a suit for declaration of his right or partition of property and not impleading himself as a party to the suit filed by the owner against the GHMC challenging the Notice issued under Section 452(2) of the 1955 Act. Though the facts in **S.M.M Jahangir's** case (1 supra) are identical, this Court relying

on the earlier judgment of the Apex Court i.e., **Ramesh Hirachand Kundanmal**'s case (2 supra), came to such conclusion since it is the discretion of the Court to decide the impleadement of a 3<sup>rd</sup> party to the suit. But in view of the latter judgment relied on by the counsel for respondent, referred supra, when the proposed party is not proper or necessary party, he cannot be impleaded and the Court has no jurisdiction to order impleadement of such person in the present suit for deciding the real controversy between the plaintiff and defendant. Hence, the principle laid down in the judgment of this Court in **S.M.M. Jahangir**'s case (1 supra) is not applicable, in view of the latter judgment of the Apex Court in **Mumbai International Airport Private Limited**'s (3 supra). Hence, I find no illegality or irregularity in the order passed by the trial Court warranting interference of this Court while exercising power under Article 227 of the Constitution of India.

8. With the above observation, the civil revision petition is dismissed. There shall be no order as to costs.

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

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**M.SATYANARAYANA MURTHY,J**

01.09.2016  
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**HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**



**C.R.P.No.3491 OF 2016**

**DATED: 01.09.2016**

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