

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3485 of 2016

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is filed challenging the Order dt.24.06.2016 in I.A.No.131 of 2016 in O.S.No.366 of 2016 on the file of IV Junior Civil Judge, City Civil Court, Hyderabad, whereby the petition filed under Order 1 Rule 10 CPC was dismissed on the ground that the petitioner has no *locus standi* to file this Petition since the easementary right of a proposed party/petitioner/3rd party cannot be decided in a suit for bare injunction filed by Plaintiff challenging the Notice issued under Section 452(2) of Greater Hyderabad Municipal Corporation Act, 1955 (for short 'the 1955 Act'), as the municipal authorities complained about deviation of sanctioned plan and proposed to take action for such deviation.

2. The revision petitioner filed a Petition before the trial Court to implead him as a party i.e., defendant to the suit filed by the plaintiff on the ground that if the construction of the defendant in deviation of approved plan is allowed, it would infringe the easementary right of the petitioner to use the lane for ingress and egress and therefore, he is a proper and necessary party to the suit. But, the trial Court having regard to the facts and circumstances of the case and nature of the dispute, concluded that the easementary right of the proposed party/defendant cannot be decided in the suit filed by the plaintiff against Municipal Corporation and he has no *locus standi* to claim any right of easement in a suit filed by the plaintiff, who is allegedly raising construction against GHMC rules, dismissed the petition.

3. The main contention of learned counsel for revision petitioner before this Court is that if the plaintiff is allowed to complete the construction or if the unauthorized construction is regularized, as per the G.O., it would affect the easementary right of proposed party to enjoy the property and hence, he is a necessary party to the suit and placed reliance on a judgment report in ***S.M.M. Jahangir Ali Khan v. Markazi Qutub Khana (Library), Mohammedia/Jamat-e-Ahle Hadees (Office), Hyderabad and another***^[1].

4. The facts, in the above referred citation, are almost identical to the present facts of the case and there also a proposed party complained about infringement of his right. But, this Court relying on ***Ramesh Hirachand Kundanmal v. Municipal***

Corporation of Greater Bombay and others^[2], concluded that the petitioner has *locus standi* and that he is also interested in the lis, his presence as a party/defendant is necessary for effective adjudication of the suit. Based on the above principle, the revision petitioner requested this Court to allow the Revision Petition.

5. Sri Eranki Phani Kumar, learned counsel for respondent, would contend that in a suit for injunction simplicitor filed by the plaintiff/owner of the house, against Hyderabad Municipal Corporation challenging the Notice issued under Section 452 (2) of the 1955 Act, the easementary right of the proposed party being the defendant cannot be adjudicated since the scope of the trial in a suit for bare injunction is limited and that his remedy is to file appropriate proceedings complaining infringement of easementary right, if any, and his right cannot be decided in the present suit. Therefore, he is neither proper party nor necessary party for affective adjudication of the lis before the Court and placed reliance on a judgment reported in **Mumbai International Airport Private Limited v. Regency Convention Centre and Hotels Private Limited and others**^[3].

6. No doubt, the suit was filed by the owner of the house i.e., plaintiff, challenging the Notice issued under Section 452 of the 1955 Act as the G.H.M.C complaining about construction of building by the plaintiff in violation of approved plan or in deviation of the approved plan. In such a case, the limited scope of the suit before the trial Court is to decide the violations or deviations, if any, against the approved plan in constructing the house, but the easementary right of the proposed party as defendant cannot be decided in a suit filed by the plaintiff against Greater Hyderabad Municipal Corporation and his remedy is to file a separate suit for the alleged infringement of easementary right, if he is entitled.

7. Chapter 4 of Indian Easements Act, 1882 (for short 'the 1882 Act') deals with disturbances of easements and remedies available to the party whose rights are disturbed. According to Section 35 of the 1882 Act, the person whose right of easement is disturbed, he may file a suit to restrain the disturbance of an easement if the easement is actually disturbed. When compensation for such disturbance might be recovered under the chapter or if the disturbance is only threatened or intended when the act threatened or intended must necessarily, if performed, disturb the easement. Where in a suit filed for permanent injunction, to restrain the defendants from interfering with the right of easement with the free flow of light and air etc., due to raising construction of septic latrines in open space owned by municipality, the

remedy is to file a separate suit but not in the suit filed by the plaintiff, owner of the house, against the Hyderabad Municipal Corporation. No doubt, the judgment of this Court in **S.M.M.Jahangir's** case (1 supra) is identical to the present facts of the case. However, based on the principle laid down in **Ramesh Hirachand Kundanmal's** case (2 supra) i.e., the latter judgment of the Apex Court, which was relied on by the counsel for the respondent i.e., **Mumbai International Airport Private Limited's** case (3 supra), 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 necessary party or a property party to the suit for specific performance."

8. 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".

9. 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 easementary right is to be agitated by impleading the petitioner himself in a pending suit filed by the house owner/plaintiff against GHMC. In a suit filed by the owner of the house, the rights of the 3rd parties, more particularly, easementary right cannot be decided. Therefore, the remedy open to the proposed party is to file a suit for disturbance of easementary right under Chapter-IV of the 1882 Act 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 impleadment of a 3rd 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 impleadment 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.

10. Accordingly, this Civil Revision Petition is dismissed, but without costs in the circumstances of the case.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 29-08-2016.

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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[\[1\]](#) 2016(3) ALD 247

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

[\[3\]](#) (2010) 7 SCC 417