

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2459 OF 2016

ORDER:

This revision, under Article 227 of the Constitution of India, is filed challenging the Order dated 18.04.2016 in I.A. No.190 of 2016 in O.S. No.1674 of 2015 passed by the VIII Junior Civil Judge, City Civil Court, Hyderabad, whereby the proposed parties were ordered to be impleaded as defendants 3 and 4 in the suit.

02. The petitioners herein are the respondents 1 and 2, first respondent herein is the petitioner and the respondents 2 and 3 are the respondents 3 and 4 in I.A. They will hereinafter be referred to as arrayed in interlocutory application, for convenience.

03. It is the case of the petitioner that he filed suit for declaration and mandatory injunction and for consequential injunction against the respondents 1 and 2 and their men alleging that they raised illegal construction over the suit schedule property about 10 feet width and 60 feet in length which leads to main road from premises bearing No.18-4-181 and 18-4-180/1 Kawadiguda, outside Aliabad, Hyderabad. Originally, the petitioner is the owner and possessor of property to the extent of 247.11 square yards vide Doc.No.4218/2007, purchased the property from one Mogili Prabhakar, there used to be a gate towards Eastern side of the lane. The respondents 1 and 2 are the immediate neighbours and one Anantha Lakshmi is the owner of the property under Document No.2335/1993. After her death, her only son Mogili Prabhakar sold the property to the petitioner and his brother for an extent of 49.11 square yards. The said lane is a common lane. Husband of first respondent is interfering with said lane, thereby filed the suit before the VIII Additional Junior Civil Judge, City Civil Court, Hyderabad, interim injunction was also obtained, and the same was violated by respondents 1 and 2, thereby the petitioner filed IA under Rule 2A of Order XXXIV of the Code of Civil Procedure, 1908 ('the Code', in

short). The main reason for filing the petition under Rule 10 of Order I r/w.151 of the Code to implead the Greater Hyderabad Municipal Corporation authorities as defendants 3 and 4 is that despite representations, the municipal authorities did not take any steps to remove constructions raised in violation of approved plan, therefore, they are proper and necessary parties to the suit.

04. The respondents 1 and 2, who are the revisions petitioners herein, have filed detailed counter raising several contentions and one among such contentions is that proposed parties are neither necessary nor proper parties to the suit to adjudicate the dispute effectively. In such case they cannot be impleaded as defendants 3 and 4, since the dispute is with regard to immovable property and GHMC is no way concerned with the property in dispute and prayed for dismissal of the petition.

05. The trial court, upon hearing of both the learned counsel, has passed the impugned order permitting the Greater Hyderabad Municipal Corporation to be impleaded as defendants 3 and 4 to the suit and directed to carry out the amendment on or before 20.04.2016.

06. The present revision petition is filed on the sole ground that Greater Hyderabad Municipal Corporation is not necessary and proper party to the suit, since no relief was claimed against the proposed parties, and, at best, the petitioner intends to prove their representations, the Greater Hyderabad Municipal Corporation authorities can be summoned to prove the same, but they cannot be brought on record as defendants, since no cause of action arise against the proposed parties.

07. During hearing, Sri D.Kodanda Rami Reddy, learned counsel for the revision petitioners/respondents 1 and 2, contended that when no relief was claimed against the proposed parties, they cannot be impleaded in exercise of power under Rule 10 of Order I of the Code and placed reliance on the Judgment of this Court in

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and prayed to allow the revision setting aside the order under challenge.

08. Per contra, Sri K.Goverdhan Reddy, learned counsel for the first respondent/petitioner, contended that to prove submission of any representations to the Greater Hyderabad Municipal Corporation, their presence is necessary and in fact the Officials of Greater Hyderabad Municipal Corporation have to take steps to demolish the constructions, which were made in contravention of the approved plan, but no steps have been taken. It is further contended that for proper and effective adjudication of the *lis* between the revision petitioners and the first respondent, the presence of the Officials of Greater Hyderabad Municipal Corporation is necessary and placed reliance on the Judgment of this Court in **S.M.M. JAHANGIR ALI KHAN V. MARKAZI QUTUB KHANA (LIBRARY) REP. BY ITS PRESIDENT, MR.**

MOHAMMED ABDUL KHADER AND ANOTHER^[2].

09. Undisputedly, the suit was filed for declaration of right in the lane and for removal of unauthorized construction raised by the revision petitioners/respondents 1 and 2 allegedly obstructing the right of passage in the lane. Thus, the suit relates to immovable property in which the first respondent/petitioner is claiming a joint right of passage to reach the main road from his house, whereas the revision petitioners/respondents 1 and 2 have set up an exclusive claim over the property. The Greater Hyderabad Municipal Corporation is the authority which sanctioned plan for construction of building as per the building bye-laws and the provisions of the Greater Hyderabad Municipal Corporation Act. No cause of action arose against the proposed parties-Greater Hyderabad Municipal Corporation officials as per the cause of action para in the plaint and no relief has been claimed against the proposed parties. The

reason for proposed impleadment of the officials of Greater Hyderabad Municipal Corporation is to produce representations made by the first respondent for removal of the unauthorized construction, encroaching into disputed line. If that is the only reason, nothing prevents the first respondent to summon the officials of Greater Hyderabad Municipal Corporation to produce the documents and to give evidence under Rule 4 of Order XVI of the Code.

10. Therefore, there is a separate procedure prescribed under the Code to summon witnesses to give evidence and to produce documents. For such purpose, the officials of Greater Hyderabad Municipal Corporation cannot be impleaded as a party to the suit, to made them roam around the Court and to incur expenditure to defend the claim unnecessarily.

11. The principle laid down in the judgment reported in **P.VIMALADEVI AND OTHERS** referred to supra is directly applicable to the present facts of the case. In paragraph 7 of the said Judgment, this Court held that from the pleadings of the parties and submissions made across the Bar, it emerges that the purpose underlying the present application is to elicit, through the proposed respondent, information about the transactions that led to the execution of the sale deeds in favour of the petitioners. For that purpose, it is not necessary that the third respondent must be added as a defendant. It would be sufficient, if he is summoned as a witness.

12. Applying the said principle to the present facts of the case, it can safely be held that the officials of Greater Hyderabad Municipal Corporation are neither necessary nor proper parties and their presence is not necessary for effective adjudication of the *lis* between the revision petitioners and the first respondent.

13. The learned counsel for the first respondent/ petitioner, while contending that the third party can be impleaded to decide the

issue before the court effectively, a third party can be impleaded under Rule 10(2) of Order I of the Code, and drawn the attention of this Court to the Judgment of this Court in **S.M.M. JAHANGIR ALI KHAN** referred to supra², wherein this Court held that it is the discretion of the court to direct impleadment of a person as necessary party to the suit even against the wish of the plaintiff, who is the dominant litigant, if the facts and circumstances of the present case so warrant.

14. But in the facts of the above Judgment, proposed party is necessary party in whose absence the issue before the Court cannot be decided and the facts of the above Judgment are distinguishable from the facts of the present case. Hence, I find that the principle laid down in the above Judgment has no application. The trial court though discussed in its single paragraph of the Order, without recording any finding whether the proposed parties are necessary or proper parties for effective adjudication or in whose absence the dispute cannot be adjudicated effectively and finally impleaded the Officials of Greater Hyderabad Municipal Corporation as defendants 3 and 4 and it is contrary to the principle laid down in Judgment in **P.VIMALADEVI AND OTHERS** referred to supra. Hence, the trial court has committed an error in passing such order by exercising the power under Rule 10 of Order I of the Code. Hence, the order is liable to be set aside.

15. In the result, the revision petition is allowed setting aside the Order dated 18.04.2016 in I.A. No.190 of 2016 in O.S. No.1674 of 2015 passed by the VIII Junior Civil Judge, City Civil Court, Hyderabad. However, liberty is given to the first respondent to take appropriate steps to summon the concerned authorities of Greater Hyderabad Municipal Corporation, if law permits. No costs.

16. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 10.08.2016

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[\[1\]](#) 2008(2) ALT 11

[\[2\]](#) 2016 (3) ALT 754