HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION
Nos.3947,3983,3985,4009,4029 and 4202 of 2016

COMMON ORDER:

All these six Civil Revision Petitions are filed under Article 227 of the Constitution of India challenging the Orders dt. 22.06.2016 in I.A.No.25/15 in I.A.No.309 in O.S.No.1817 of 2015, I.A.No.413 of 2015 in O.S.No.1816 of 2015, I.A.No.26 of 2016 in O.S.No.1817 of 2015, I.A.No.412 of 2015 in I.A.No.307 of 2015 in O.S.No.1815 of 2015, I.A.No.414 of 2015 in I.A.No.308 of 2015 in O.S.No.1816 of 2015 and in I.A.No.411 of 2015 in O.S.No.1815 of 2015 passed by VIII Junior Civil Judge, City Civil Court, Hyderabad, whereby the trial Court dismissed all applications filed under Order 1 Rule 10 r/w 151 of CPC to implead the petitioner/respondent No.2 herein as defendant No.2 in the suit as well as interlocutory applications.

2. Since the issue involved in all these petitions is one and the same, all the petitions are heard together to dispose of the same by this Common Order.

3. For the purpose of convenience and to avoid ambiguity in the discussion, the parties are referred to hereinafter, as arrayed in C.R.P.No.4202 of 2016.

4. The petitioner/Rajender Vyas filed I.A.No.411 of 2015 in O.S.No.1815 of 2015 alleging that he is the defendant in the

main suit and the plaintiff/ respondent filed the present suit against him for eviction as he is the tenant of one Mulgi part of premises bearing No.21-2-131/7 to 9. Originally the said property was obtained by the petitioner from Sharbadi Bhai i.e., grand mother of proposed party. It is further contended that the plaintiff/respondent informed to the petitioner that she purchased the property from Sharbadi Bhai under registered Sale Deed and the tenancy was attorned and thereby, the petitioner started paying rents to Plaintiff/respondent. It is further contended that later rent was enhanced and a lease deed was executed by petitioner and respondent No.1 herein/Plaintiff.

(b) On 10.02.2015, the petitioner received a notice dt. 5.2.2015 from the office of M/s MRK Chowdhary, Advocate, issued on behalf of Sri Jagmohan @ Anil Kumar/the proposed party, informing that O.S.No.1110 of 1981 was filed for declaration of title and for permanent injunction on the basis of Sale Deed executed by Sharbadi Bhai and the said suit was decreed on 25.09.1997.

5. Aggrieved by the said Decree and Judgment, the proposed party/Anil Kumar filed CCCA No.1/1992 and the same was allowed setting aside the decree and judgment in O.S.No.1110 of 1981. Against the said decree and judgment, respondent No.1 herein/plaintiff filed LPA No.166 of 1998 and the same was dismissed by the High Court. Aggrieved by the

Order in LPA, SLP was preferred vide No.16623 of 2014 by the plaintiff before the Apex Court and the same was dismissed. Therefore, the suit of the plaintiff therein stands dismissed and the sale deed in favour of plaintiff was declared as null and void and the attornment of tenancy in favour of plaintiff also became null and void.

6. It is further contended that Anil Kumar became the absolute owner of the schedule property and the said Anil Kumar called upon the defendants to pay rent to him.

7. It is further contended that he got issued Reply Notice on 5.2.2015 contending that defendant was being threatened to evict by Anil Kumar on the basis of the decree in CCCA No.01 of 1992. Therefore, the said Anil Kumar is proper and necessary party to the present suit, in whose absence the matter cannot be decided. Consequently, he prayed to bring him on record as second defendant, to adjudicate the suit effectively.

8. Respondent No.1 herein filed Counter denying the material allegations contending that proposed party is neither necessary nor proper party and the petitioner having accepted the respondent No.1/plaintiff as a land lady cannot retract from his previous statement. It is further contended that it is not HUF Property and after purchase of the property, the relationship between plaintiff and defendant No.1 as land lady and tenant has ceased to exist and the tenancy was attorned

and later a fresh lease deed was executed on 19.03.2010. Therefore, there is subsisting jural relationship of between them as land lady and tenant and the alleged transfer of right to transfer enjoyment of immovable property is came to an end on account of execution of lease deed dt. 19.03.2010. Therefore, the proposed party is neither necessary nor proper party to the suit and on that ground, the petitioner cannot be allowed to implead the proposed party as defendant No.2 as he is not proper and necessary party to the suit.

9. The trial Court upon hearing argument of both the counsel, dismissed the petition holding that he is neither necessary nor proper party to the suit.

10. Aggrieved by the Decretal Orders and Orders, the present revision petitions are filed under Article 227 of the Constitution of India raising several contentions, during hearing, Sri Murlinarayan Bung, learned counsel for petitioners contended that when the Sale Deed between Sharada Bai and Anil Kumar was declared as null and void, the tenancy is restored between Anil Kumar and the petitioner herein and thereby Anil Kumar is a proper and necessary party, in whose absence the suit cannot be adjudicated effectively and the lease prior to execution of lease deed dt. 19.3.2010 is revived and therefore, his presence is necessary and prayed to implead him as

defendant No.2 in the suit as he is necessary and proper party to the suit.

11. Undisputedly, the total dispute between respondent No.1/plaintiff Anil Kumar went up to Supreme Court and it attained finality, setting aside or declaring the Sale Deed between Sharbadi Bhai and the respondent No.1/plaintiff herein as null and void and therefore, the plaintiff herein is no more owner of the property. But, execution of Sale Deed is not in dispute, which was declared as null and void by the competent Court. Before passing such declaration declaring the Sale Deed as null and void, the petitioner herein paid rent to the 1st respondent/plaintiff, in view of attornment of tenancy under Section 109 of Transfer of Property Act. Thus, there was a relationship between plaintiff and defendant as land lady and tenant, in view of ownership, before passing a decree in C.C.C.A.No.1 of 1992, which attained finality. Curiously, during pendency of the suit between Anil Kumar and the 1st respondent/plaintiff herein, the petitioner/defendant executed a fresh lease deed dt. 19.03.2010, accepting the plaintiff as land lady and continuously paying rent to the plaintiff.

12. The only contention of the plaintiff before this Court is that when the fresh lease deed dt. 19.03.2010 was executed irrespective of ownership, the relationship between them as land lady and tenant is being continued and as 1st

respondent/ plaintiff is landlord, the suit for ejectment cannot be converted in a suit for title and therefore, the petitioner cannot be permitted to implead the said Anil Kumar, a party to the suit, since the dispute is with regard to the relationship of land lady and tenant. He placed reliance on several judgments reported in **D. Satyanarayana v. P. Jagadish[1], Kempahanumaiah v. M/s Allied Motors Service Station and others[2] and State of Andhra Pradesh and others v. D. Raghukul Pershad (dead) by L.Rs and others**[3], wherein the Apex Court laid down different principles regarding estopel against tenancy under Section 116 of Indian Evidence Act and on the strength of the above judgments, it is contended by the learned counsel for revision petitioner that a suit for ejection cannot be converted into possession and the present petition is not maintainable under law.

13. Undisputedly, the suit was filed for ejectment of the defendant on the strength of Lease Deed dt. 19.03.2010 executed by the defendant in favour of plaintiff. Therefore, a right to transfer of enjoyment of immovable property took place by virtue of Lease Deed dt. 19.3.2010 and the ownership of the property is irrelevant for deciding the present issue, since, the person who transferred the right of enjoyment is a lessor within the definition of Section 105 of Transfer of Property Act and therefore, the ownership is

---

[1] (1987) 4 SCC 424
[2] AIR 2012 Karnataka 100
[3] (2012) 8 SCC 584

irrelevant for deciding the issue before the trial Court. There was a fresh lease deed and the earlier lease between the plaintiff and defendant is ceased to exist since fresh lease was entered on fresh terms of lease. Therefore, the ownership of the premises is irrelevant.

14. The word 'Proper and necessary party' is defined in a judgment reported in **Mumbai International Airport Private Limited v. Regency Convention Centre and Hotels Private Limited and others**[4]**, wherein the Apex Court** at paragraphs 13, 14 and 15 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".
>
> "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."

---

[4] (2010) 7 SCC 417

15. In view of the principles in the above judgment, only either proper or necessary party be impleaded, but not a person who is unconnected with the real dispute between the parties. Here, the real dispute is only regarding termination of tenancy and ejectment of tenant and the ownership of the property is beyond the scope of trial in a suit for ejection. If really, the said Sarbadi Bai or Anil Kumar became the owner of the property on account of decree passed in CCCA No.01 of 1992, his remedy is to recover the possession, approaching appropriate Court and his rights cannot be decided in a suit for ejectment between landlady and tenant.

16. The Apex Court in **D. Satyanarayana's** case, referred to supra, it was held as follows:

> " The rules of estoppel embodied under Section 116 of the Evidence Act and a tenant who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord. During the continuance of the tenancy, the tenant cannot acquire by prescription a permanent right of occupancy in derogation of the landlord's title by mere assertion of such a right to the knowledge of the landlord. The general rule is however subject to certain exceptions. Thus, a tenant is not precluded from denying the derivative title of the persons claiming through the landlord".

17. In **State of Andhra Pradesh's** case, the Apex Court in para No.7 held as follows:

> "the law is settled by this Court in D.Satyanarayana's case, that the tenant who has been let into possession bt the landlord cannot deny the landlord's title however defective it may be, so long as he has not openly surrendered possession by surrender to his landlord. Although there are some exceptions to this

general rule, none of the exceptions have been established by the appellants in this case".

18. In the aforesaid decision—***J.J.Lal Private Limited and others v. M.R.Murali and another AIR 2002 SC 1061***, the Apex Court in a suit for eviction of tenant and impleadment of parties came up for consideration, held that relationship of Municipal Corporation, the original owner of premises with landlords and their mutual rights and obligations are not germane to the proceedings. Similarly, the question of title between sister of landlords and the landlords cannot be decided in these proceedings. Impleadment of Municipal Corporation and sister of landlord would change complexion of litigation and raise such controversies as are beyond the scope of this litigation. Presence of either of the applicants is neither necessary for decision of question involved in these proceedings nor their presence necessary to enable the Court effectively and completely to adjudicate upon and settle questions involved in these proceedings and therefore, they are neither necessary nor proper parties. Any decision in these proceedings would govern and bind the parties herein. Each of the two applicants is free to establish its own claims and title whatever it may be in any independent proceedings before a competent forum. The applications for impleadment are dismissed.

19. In **Kempahanumiah's** case, the Karnataka High Court held in para No.19 as follows:

> " in the aforesaid decision, the Apex Court has held that in a simple suit for eviction between the landlord and the tenant, an application under Order 1 Rule 10 of CPC filed by the applicants claiming title to the property cannot be considered, as, that would change the complexion of the litigation and raise such controversies as are beyond the scope of litigation. Any decision in the ejectment suit would govern and bind the parties therein. The impleading applicants are free to establish their claims and title whaterver it may be in an independent proceeding before a competent forum. Therefore, the applicants claiming to be the owners in title cannot be permitted to come on record".

20. Therefore, the judgment in **J.J. Lal Private Limited**'s case, referred to supra, is directly on the issue in this matter and on the strength of said principle, the suit for ejection cannot be converted into a title suit and if the proposed party is entitled to recover possession of the property declaring the said Sale Deed between the Sharbadi Bhai and the 1st respondent/plaintiff as null and void, his remedy is to recover the possession in appropriate proceedings and he cannot be impleaded as a party to the present suit as the rights of the proposed party cannot be gone into in a suit for ejection based on the lease deed dt. 19.03.2010. Therefore, by applying the principle in ***J.J.Lal Private Limited***, referred to supra, the proposed party—Anil Kumar is neither necessary nor proper party to the suit and consequently, he is not entitled to come on record as defendant No.2, whose rights cannot be decided in the present suit for ejection between the landlady and tenant, based on lease agreement. Hence, the

trial Court rightly concluded that the proposed party is neither necessary nor proper party to the suit and the findings of the trial Court does not call for interference of this Court within the scope of the suit for ejection while exercising power of superintendence under Article 227 of the Constitution of India.

21. In the result, these six Civil Revision Petitions are dismissed. No costs.

As a sequel, miscellaneous petitions, if any, pending in these cases, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 26-09-2016.

eha

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION
Nos.3947,3983,3985,4009,4029 and 4202 of 2016

Dt.26.09.2016

eha