

**HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**

**CIVIL REVISION PETITION No. 4651 of 2010**

**ORDER:**

The present Civil Revision Petition is filed assailing the order dated 29.08.2010 passed in I.A.No.2004 of 2009 in O.S.No.261 of 2005 on the file of the II Additional District Judge, Ranga Reddy District at N.T.R.Nagar, wherein an application filed under Order I rule 10 (2) of C.P.C. to implead the petitioner as second defendant was dismissed.

The facts in issue are as under:

The first respondent/plaintiff filed O.S.No.261 of 2005 seeking specific performance of agreement of sale dated 18.08.2003 directing the defendant to execute register sale deed in respect of suit schedule property or in alternative the Court may execute and register the sale deed in favour of the plaintiff by collecting proper charges and to deliver the peaceful vacant possession. Pending the said suit, the petitioner herein filed I.A.No.2004 of 2009 seeking his impleadment as defendant No.2 in the suit proceedings. It has been stated in the affidavit filed in support of the petition that the suit was filed for specific performance of contract basing on the agreement of sale dated 18.08.2003 alleged to have been executed by the defendant, who is none other than the brother of the petitioner. It is stated that the suit schedule property is an ancestral property of the family and one T.Kista Reddy was the absolute owner and possessor of the property. The said Kista Reddy died intestate leaving behind his son Subhan Reddy, who is the father of the defendant and

the petitioner. The said Subhan Reddy had another son by name Gopal Reddy and also two daughters by name Andalu and Lalitha. It is stated that till date the properties are not divided by meets and bunds and as such he filed O.S.No.787 of 2007 for partition and separate possession in respect of the suit schedule property along with other properties. It is stated that the defendant has no right to alienate the ancestral property and the petitioner herein has an equal share in the said property. On coming to know that the defendant entered into an agreement with the plaintiff and about the pendency of the suit, the petitioner filed an application seeking his impleadment as defendant No.2 in the suit.

A counter came to be filed by the plaintiff opposing the same. In the counter it has been stated that he entered into an agreement of sale with defendant for purchase of the above mentioned property on the ground that the defendant acquired the said property through a registered gift settlement deed bearing document No.957/1997 from his father. Since the first defendant failed to execute the registered sale deed, the plaintiff filed the above suit. It is his case that the defendant and the petitioner herein entered into a family settlement and the petitioner herein has sold away his share to the third party. Hence, he submits that the petitioner is not a necessary party to the suit proceedings and praying to dismiss the petition.

After considering the rival submissions, the learned trial Judge rejected the application on the ground that the petitioner has filed a suit for comprehensive relief of partition and separate possession and he cannot be permitted to agitate his claim in a suit instituted by a third party. If the petitioner succeeds in his

partition suit he can get possession of his share in the schedule property in the final decree proceedings. It is further held that in a suit filed for specific performance of contract, no finding can be given as to whether there is a partition among the defendant and the so called sharers in the property. Challenging the same the present revision is filed.

Both the parties reiterated the averments made in the affidavit and counter filed before the lower Court. It has been specifically contended that unless the rights are crystalised there is no point in permitting the petitioner to implead as defendant.

The scope and object of Order 1 Rule 10 of C.P.C. was considered in detail by a learned Single Judge of this Court in

***A.Gyaneshwar Rao v. Mahmood Shaireef and another***<sup>[1]</sup>  
wherein it has been held as under:

“10. The principles that could be said to emerge in regard to application of the provisions enacted in sub-Rule (2) of Rule 10 of O. 1. C. P. C. and in particular the expressions "whose presence before the court may be necessary" and "in order to enable the court to effectively and completely adjudicate upon and settle all then question involved in the suit" are:

(1) "Settle all the questions involved in the suit" should be construed to mean, not restricting the scope between the parties to the suit, but to a wider area concerning the subject-matter of the suit involving even the third party's claim and interest.

(2) The question of addition of parties under R. 10 (2) of O. 1 is generally not one of initial jurisdiction but of a judicial discretion which has to be exercised in view of the facts and circumstances of each case. The jurisdictional aspect is in the limited sense contemplated under Sec. 115 of the C. P. C.

(3) For effectual and complete adjudication of the

questions involved in the suit, the presence of a third-party, even if it is not necessary, but if proper, should be allowed to be added as a party if applied for.

(4) In a suit relating to property, the person to be added as party should have a direct interest as distinct from a commercial interest in the subject-matter of the litigation.

(5) Where the subject-matter of a litigation is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the court is of the opinion that by adding that party, it would be in a better position effectual and completely to adjudicate upon the controversy.

(6) The rule laid down in Sc. 43 of the Specific Relief Act is not exactly a rule of res judicata. It is narrow in one sense and wider in another.”

From the judgment of this Court referred to above, it is clear that addition of parties is generally not one of initial jurisdiction but of judicial discretion which has to be exercised in view of the facts and circumstances of each case. It is also upon held that settlement of all questions involved in the suit should be construed to mean, not restricting the scope between the parties to the suit, but to a wider area concerning the subject matter of the suit involving even the third party's claim and interest. It has been further held that for effectual and complete adjudication of the questions involved in the suit, the presence of third party even if it is not necessary but if proper should be allowed to be added as party.

In the instant case there appears to be some dispute between two brothers. One of the brothers entered into an agreement of sale with the plaintiff but did not execute registered sale deed, which led to filing of the present suit. The petitioner herein, who wants to get himself impleaded in the present suit

proceedings, also filed O.S.No.787 of 2007 seeking partition and separate possession of the property. In the said suit the plaintiff herein got impleaded as defendant No.5. Initially O.S.No.787 of 207 was filed by the petitioner against his father, brothers and one C.Venkataiah, but subsequently the plaintiff herein got impleaded as defendant No.5. In view of the argument of the learned counsel for the petitioner that the rights are not crystallized till date and as there is no settlement or partition as contended by the defendant, it would be proper to implead the petitioner as second defendant in the suit, so as to enable him to place his case before the Court.

Accordingly, the Civil Revision Petition is allowed.

There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

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**JUSTICE C. PRAVEEN KUMAR**

17.03.2016  
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[\[1\]](#) AIR 1982 AP 155 (1)