

THE HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.1602 of 2016

ORDER:

This Civil Revision Petition, filed under Article 227 of the Constitution of India, challenges the order, dated 18-01-2016 passed in I.A.No.236 of 2015 in O.S.No.118 of 2013 on the file of the Court of the Junior Civil Judge, Guntakal.

Petitioner herein instituted the above said suit for permanent injunction in respect of plaint schedule house property against the 2nd respondent herein who is the husband of the 1st respondent. In the said suit, the 1st respondent filed I.A.No.236 of 2015 under the provisions of Order 1 Rule 10, seeking to implead herself as 2nd defendant in the suit and the said application was resisted by the plaintiff/petitioner herein by way of filing counter. The learned Junior Civil Judge, by way of an order, dated 18-01-2016, allowed I.A.No.236 of 2015. The said order is under challenge in the present revision.

Heard Sri Butta Vijaya Bhaskar, learned counsel for the petitioner and Sri T.L. Krishna Prasad, learned counsel for the 1st respondent, apart from perusing the material available before this Court.

Learned counsel for the petitioner, attacks the questioned order as erroneous, contrary to law and opposed to the object of Order 1 Rule 10 of Code of Civil Procedure. It is further contended by learned counsel for the petitioner that the 1st respondent is neither a proper nor a necessary party since no relief is sought

against the 1st respondent and according to the learned counsel, the reasons assigned by the learned Junior Civil Judge are neither valid nor convincing.

On the contrary, learned counsel for the 1st respondent argues that there is no error nor there exists any infirmity in the impugned order and in the absence of the same, the present revision deserves to be dismissed.

To bolster his submissions and contentions, learned counsel for the 1st respondent placed reliance on a decision reported in ***RAMESH HIRANAND KUNDANMAL V. MUNICIPAL CORPORATION OF GREATER BOMBAY AND OTHERS***^[1].

In the above background, now the issue that emerges for consideration of this Court is:

“Whether the order under challenge is sustainable and tenable?”

The case of the 1st respondent as per the affidavit filed in support of the Interlocutory Application is that the petitioner herein illegally and highhandedly occupied their plaint schedule property and he is a powerful and rich person having backing of antisocial elements and the respondents 1 and 2 have moved from pillar to post to reclaim their property. It is also the case of the 1st respondent herein that the petitioner produced evidence and in the meanwhile her husband (Respondent No.2 herein) is found missing for one year and she lodged a complaint and police registered Crime No.81 of 2015 on the file of the I Town Police Station, Guntakal. It is also averred in the supporting affidavit of

interlocutory application that the plaintiff is trying to take advantage of the situation and the 1st respondent is suspecting some conspiracy behind the back of 2nd respondent.

On the other hand, as per the counter-affidavit filed by the 1st respondent before the Court below, the 1st respondent is neither a proper nor a necessary party and no way connected to the suit schedule property. The 1st respondent herein is no other than the wife of the 2nd respondent/sole defendant in the suit initiated by the petitioner herein and the suit schedule property is a house property.

A perusal of the order under challenge clearly demonstrates that the learned Junior Civil Judge took into consideration various averments in the affidavit filed in support of the interlocutory application so also the counter averments in a thorough and meticulous manner. The learned Junior Civil Judge also found that in the event of not permitting the 1st respondent to come on record the petitioner herein would be in advantageous situation and no prejudice would be caused to the plaintiff and on the other hand, the impleadment would be helpful for proper adjudication and otherwise it would not be possible to arrive at just decision and the eventually found the 1st respondent as necessary and proper party for final adjudication of the suit.

In this connection, it may be appropriate to refer to the judgment of the Hon'ble Apex Court (1st cited) and paragraph Nos.8, 10 and 12 of the above judgment read as under:

"8. The case really turns on the true construction of the Rule in particular the meaning of the words "whose

presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit." The Court is empowered to join a person whose presence is necessary for the prescribed purpose and cannot under the Rule direct the addition of a person whose presence is not necessary for that purpose. If the intervener has a cause of action against the plaintiff relating to the subject-matter of the existing action, the Court has power to join intervener so as to give effect to the primary object of the order which is to avoid multiplicity of actions.

... ..

10. The power of the Court to add parties under Order I Rule 10, C.P.C, came up for consideration before this Court in Razia Begum (supra). In that case it was pointed out that the Courts in India have not treated the matter of addition of parties as raising any question of the initial jurisdiction of the Court and that it is firmly established as a result of judicial decisions that in order that a person may be added as a party to a suit, he should have a direct interest in the subject-matter of the litigation whether it be the questions relating to movable or immovable property.

... ..

12. Sinha, J. speaking for the majority said that a declaratory judgment in respect of a disputed status will be binding not only upon parties actually before the Court but also upon persons claiming through them respectively. The Court laid down the law that in a suit relating to property in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest in the subject-matter of the litigation. Where the subject-matter of a litigation is a declaration as regards status or a legal character, the rule of presence of 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 effectually and completely to adjudicate upon the controversy. In cases covered by the statutory

provisions of sections 42 and 43 of the Specific Relief Act, the Court is not bound to grant the declaration prayed for on a mere admission of the claim by the defendant. If the Court has reasons to insist upon a clear proof apart from the admission, the result of a declaratory decree on the question of status such as the controversy in that suit affects not only the parties actually before the Court but generation to come and in view of that consideration, the rule of present interest as evolved by case law relating to disputes about property does not apply with full force. Applying the proposition enunciated to the facts of the case, the Court came to the conclusion that the courts below did not exceed their power in directing the addition of respondents 1 and 2 as parties defendants in the action nor it could be said that the exercise of the discretion was not bound.”

It is a settled and well-established proposition of law that unless the order impugned suffers from patent perversity, the invocation of jurisdiction of this Court under Article 226 of the Constitution of India is impermissible. In the instant case, this Court finds no such perversity, which warrants interference of this Court.

For the aforesaid reasons, the Civil Revision Petition is dismissed. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.V. SESA SAI, J

July 15, 2016

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THE HON'BLE SRI JUSTICE A.V. SESA SAI

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