

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

**CIVIL REVISION PETITION No.5310 of 2010**

**ORDER:**

The petitioner, who is proposed defendant No.2, preferred the present Civil Revision Petition under Article 227 of the Constitution of India, assailing the order dated 24.09.2010 passed in I.A. No.615 of 2010 in O.S. No.955 of 2010 on the file of the VI Junior Civil Judge, City Civil Court, Hyderabad, wherein an application filed under Order I Rule 10(2) of Code of Civil Procedure seeking permission to add the proposed party as 2<sup>nd</sup> defendant in the main suit, was rejected.

A perusal of the material on record would show that the petitioner (proposed 2<sup>nd</sup> defendant) is an Association registered under Societies and Registration Act in the year 2001, formed for the welfare of all the flat owners of Pooja Residential Apartments. The apartments were constructed in the land belonging to one P.B.Lal. It is alleged that during the course of construction, their vendor who was a developer, made several deviations from the sanctioned plan. As per the sanctioned plan, the main entrance of the said Apartments was to be situated on the south-west corner of the apartments. Their vendor did not remove the temporary sheds existing on the corner of the apartments and allowed his friend to use the same. It

is alleged that the said structures if continued to be used it will cause inconvenience to all the flat owners of the said apartments in using the main entrance gate. Hence, the society gave a complaint to the Municipal Corporation for removal of the structures of the first respondent, which were existing in the said premises. A notice was issued by the 2<sup>nd</sup> respondent to the 1<sup>st</sup> respondent. Suppressing all the facts, the 1<sup>st</sup> respondent filed O.S. No.955 of 2010 seeking perpetual injunction. Hence, the proposed defendant filed I.A.No.615 of 2010 in O.S.No.955 of 2010 under Order I Rule 10(2) C.P.C. to implead him as 2<sup>nd</sup> defendant. By an order dated 24.09.2010 the trial court dismissed the application. Challenging the same, the present Revision is filed.

A counter was filed before the trial Court inter-alia contending that the petitioner's apartments were constructed by deviating the sanctioned plan and only to grab the land of the 1<sup>st</sup> respondent, the petitioner is instigating the 2<sup>nd</sup> respondent against the 1<sup>st</sup> respondent. It is said that the premises bearing No.6-2-965/15 is not part and parcel of the premises bearing No.6-2-968. It is said that even prior to the construction of the apartment, he was in occupation of the said premises. After hearing both sides, the said application was dismissed on the ground that if the proposed party had a

right over respondent No.1's property, he has to file a separate suit, but cannot implead in a suit filed by the respondent No.1 against respondent No.2 for removal of the structures.

The learned counsel for the petitioner mainly submits that since the entrance to the apartment is sought to be obstructed by the 1<sup>st</sup> respondent, he is necessary party to the proceedings. It is further stated that as the Municipal Corporation of Hyderabad issued a notice to the 1<sup>st</sup> respondent basing on a complaint given by the petitioner, it would be appropriate to hear them while deciding the suit filed for injunction. He also points out to the averments made in the counter filed in the lower court which are as under :

“Sofar as the main entrance and the existence of the Suit scheduled property is concerned, it was already explained to the similar allegations made by the Respondent/Corporation during the enquiry that was being carried out in I.A.No.177 of 2010 in the present suit. The main gate of the petitioner's apartment is situated on the eastern side but not on the western or on their alleged south-west corner. The suit scheduled property is situated since way back even long before commencement of construction of the Pooja Apartments. The photographs filed by both this Respondent and the Respondent Corporation clearly show the entrance of the Pooja Apartments and illegal construction of compound wall made by the petitioner intruding the outer walls of the suit scheduled property. The question of the Petitioner having the easemental right through the suit scheduled property did not and does not arise when it is admitted and evident fact

that the suit scheduled property was constructed about more than 36 years back and the commencement of construction of the petitioner's Pooja Apartment itself was made much sooner than a decade.

However, to enquire about the falsity or otherwise of the allegations made by the petitioner through a fullfledged trial, it is necessary that the petitioner herein be impleaded into the present suit."

In view of the admissions made by the respondent in his counter, he submits that the respondent should not have any objection for impleading the petitioner.

On the other hand, the learned counsel for the respondent opposed the application reiterating the contents of the counter filed in the lower court.

Order I Rule 10 of C.P.C., states that where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bonafide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just. Similarly Order I Rule 10(2) of C.P.C., states that the Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name

of any party improperly joined, whether as plaintiff or defendant, be struck out, and the name of any person who ought to have been joined, whether as plaintiff or defendant, or 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, be added.

In **Mumbai International Airport (P) Ltd. v. Regency Convention Centre and Hotels (P) Ltd.**,<sup>[1]</sup> the Apex Court considered the scope of Order 1 Rule 10(2) CPC and observed as under :

“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 1 Rule 10(2) of the Code of Civil Procedure (“the Code”, for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

“10. (2) Court may strike out or add parties.—The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or 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, be added.” The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who

ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper 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 a proper or necessary party, the court has no 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 proper party to the suit for specific performance.

Let us consider the scope and ambit of Order 1 Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo motu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice.” (emphasis supplied)

In **Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay**<sup>[2]</sup>, the Apex Court interpreted the aforesaid provision and held as under:

"Sub-rule (2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touchstone of Order 1 Rule 10 which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case." (emphasis supplied)

Similarly while dealing with Order I Rule 10 (2) C.P.C., the Apex Court in **Anil Kumar Singh v. Shivnath Mishra**<sup>[3]</sup>, held as under:

"By operation of the above-quoted rule though the court may have power to strike out the name of a party improperly joined or add a party either on application or without application of either party, but the condition precedent is that the court must be satisfied that the presence of the party to be added, would be necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit. To bring a person as party-defendant is not a substantive right but one of procedure and the court has discretion in its proper exercise. The object of the rule is to bring on record all the persons who are parties to the dispute relating to the subject-matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings."

Keeping in view the principles of law laid down by the Apex Court, I shall now deal with the case on hand.

In the instant case the 1<sup>st</sup> respondent herein filed a suit for injunction restraining the Municipal Corporation

from interfering with the possession. The said suit came to be filed pursuant to a notice issued by the 2<sup>nd</sup> respondent to the 1<sup>st</sup> respondent. It may be true that the suit was instituted pursuant to a notification issued, but it is also to be noted that the 2<sup>nd</sup> respondent issued notice to the 1<sup>st</sup> respondent on the basis of complaint given by the residents of Pooja Apartments when the 1<sup>st</sup> respondent herein was interfering with the passage to their apartments. It is the grievance of the proposed defendant that the said structures, if continued, will cause inconvenience to all the flat owners of the apartments in using the main entrance gate. Hence, the finding of the trial court that a separate suit has to file cannot be accepted since the petitioner is not claiming any title over the said land. His only request is to hear him so as to bring out the true facts before the Court, more so when the proceedings were issued by the 2<sup>nd</sup> respondent pursuant to a complaint given by the petitioner. In view of the above, this Court is of the opinion that the proposed defendant is a necessary party to the suit as he would be greatly prejudiced if he is not made as a necessary party to the proceedings.

Accordingly, the Civil Revision Petition is allowed and orders passed in I.A. No.615 of 2010 in O.S. No.955 of 2010 on the file of the VI Junior Civil Judge, City Civil

Court, Hyderabad, is set-aside. There shall be no order as to costs. As a sequel to it, miscellaneous petitions pending if any in the Civil Revision Petition shall stand closed.

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**JUSTICE C. PRAVEEN KUMAR**

Date: 11.02.2016

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[\[1\]](#) (2010(7) SCC 417)

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

[\[3\]](#) (1995) 3 SCC 147