

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. Nos.4666 and 4831 of 2015

COMMON ORDER:

The Civil Revision Petitions are filed against the orders dated 04.09.2015 passed in I.A. Nos.853 and 854 of 2015 in O.S. Nos.1868 and 1869 of 2014 respectively by Principal Senior Civil Judge, Vijayawada.

2) O.S. No.1868 of 2014 and 1869 of 2014 are maintained by the two plaintiffs against the sole defendant i.e., Vijayawada Municipal Corporation, Rep. by its Commissioner, Vijayawada for the relief of declaration of notice dated 23.12.2014 vide R.C. No.G1-119689/2004 issued by the defendant municipality as illegal, unauthorized and ultra virus and consequently for prohibitory injunction restraining the defendant municipality and its men from demolishing any of the portions of the suit schedule premises and to grant costs and such other reliefs.

3) The description of the suit schedule shows in both suits is R.C.C. roofed two storied building along with A.C sheet roof on the terrace constructed in the land in the extent of 242 Sq.yds and other suit concerned in an extent of 193.6 Sq.yds in R.S. No.113/4 bearing D.No.58-5-13 and 58-4-13 old Assessment Nos.35316 and 35316/1 and New Assessment No.274285 and 275928 respectively situated at Patamata, Vijayawada VMC, Vijayawada, Krishna District within the boundaries described in both the plaint schedules. Pending both the suits, there were temporary injunction orders in force against the defendant municipality and while under contest, the petitioner by name

Kodali Vijaya Kumar as one of the purchasers of the part of the respective plaint schedule property sought for impleadment in the suit saying that there is a possibility of collusion between the defendant municipality and the plaintiffs and the plaintiffs managed to get order for demolition in seeking to regularize the unauthorized construction apart from deviation for the ground floor, part of the 1st floor and total violation of the other floors which are constructed without even any application or permission but for separate permissions, as if two applications of the petitioners in so far as ground and 1st floor concerned and the petitioner claims that he purchased a portion of the first floor of the building and at best, there are only deviations insofar as ground and first floor concerned purchased by him and two others, who are internally related to the said two plaintiffs in the suits. So far as 2nd and 3rd floor, which are totally unauthorized constructions without seeking any permission.

4) It is, thereby, sought for his impleadment. The plaintiffs as respondents to I.A. Nos.853 and 854 of 2015 respectively opposed the same by filing counters contending that the petitioner approached the Court with no bonafides and with ill-will from the facts that there is another suit lis pending between them and where the petitioner went unsuccessful in seeking temporary prohibitory injunction against the plaintiffs herein and also against the municipality. The Municipality when issued notice for demolition respectively for the deviations in the ground and first floors and for the totally unauthorized constructions covered under 2nd and 3rd floors, it is the stand of the petitioner saying constructions made by the plaintiffs herein are to be

demolished and his constructions are to be regularized, with a pretence that he bonafidely purchased the portion from the plaintiffs believing that there is an approved plan though he is conscious that there are deviations beyond the approved plan.

5) By separate orders dated 04.09.2015, the lower Court allowed the applications for impleadment invoking Order I Rule 10 C.P.C.

6) The present revision petitions are filed therefrom saying the contentions raised in the counters were not considered by the trial Court, the trial Court did not properly advert to the difference between a necessary party and proper party and there is no basis for impleadment of the proposed party for he is neither necessary nor even a proper party for the effective adjudication of the lis and thereby the orders are liable to be set-aside and the revisions are to be allowed.

7) Whereas it is the contention of the learned counsel for the revision 1st respondent that the impugned orders of the lower court hold good and supported by reasons and the plaint description showing the entire property as if, at all, relief to be asked for part of the property of the 1st floor alienated to the petitioner that also included in the plaint schedule of the two suits and he is a necessary party in that way also and atleast a proper party and thereby it is within the limited scope of revision, for this Court while sitting in revision against the orders, there is nothing to interfere and sought for dismissal of the revisions.

8) Heard. Perused the material on record.

9) The counsel for the revision petitioner placed reliance upon the expression of the Apex Court in **Ramesh Hiranand Kundanmal vs Municipal Corporation of Greater Bombay**¹ whereas learned counsel for the 1st respondent—implead petitioner of the lower Court placed reliance on the expression of the Single Judge of this Court in **Neelam Ajit vs Suresh Reddy**² and the expression of the Apex Court in **N.Anantha Reddy vs Anshu Kathuria**³ particularly at para No.7.

10) The factual matrix no more required to refer in detail for answering lis covered by the revision petitions. The undisputed facts are that the revision petitioner maintained the revision against the plaintiffs and could not get injunction order that is alleged as one of the causes in filing the petition with lack of bonafides. The other fact is not in dispute that the plaint schedule shows ground + three floors, whereas the 2nd and 3rd floors are totally unauthorised constructions without approved plan and so far as ground and first floor are concerned, though there are two approved plans, as they built compound wall as if a single building or apartment and constructed G+1 with deviations to the approved plans instead of separate building of G+1 as combined block and so far as revision petitioner's deviations in what he purchased from the plaintiffs in 1st floor portion concerned, to the notice for demarcation, there was a submission before the Municipal commissioner seeking regularization of the deviations as there is no approved plan for that and so far as

¹ 1992 SCC (2) 524

² 2005 (6) ALD (NOC 223)

³ (2013) 15 SCC 534

2nd and 3rd floors, which are subject matter of the suits concerned saying there is a total deviation requires demolition.

11) In fact from those objections of both parties and on consideration, the municipal commissioner ordered for demolition of total deviations of unauthorised constructions of 2nd and 3rd floors.

12) Undisputedly, there is nothing to demonstrate that there is a collusion between the plaintiffs and municipality and the same is substantiated by the following:

the request of both sides for regularization i.e., the total unauthorised construction of the plaintiffs and unauthorized construction by deviations to the approved plan so far as that of the proposed party, the municipality ordered to demolish the total unauthorised construction and deviation portion of them respectively as the case may be.

13) The expression of the ***Mumbai International Airport Pvt. Ltd., vs Regency Convention Centre & Hotels Pvt. Ltd & others***⁴ holds that once there is a change of cause of action or change in nature of suit, the proposed party even made out a case, cannot be permitted to come on record. In N.Anantha Reddy (supra) particularly para No.7 deals with neighbours' right of impleadment in the suit maintained by owner of the premises constructed by violation of the approved municipal plan without leaving setbacks. There it was held that there must be a semblance of right as a proper party to come on record. So far as the present suit is concerned, by permitting the proposed party as

⁴ AIR 2010 SC 3109

2nd defendant, what the plaintiffs entitled to the suit reliefs to be proved against the defendant municipality, same facts even against the proposed party, who is owner of part of the premises, which is the subject matter of the plaint schedule and what the proposed party as 2nd defendant can show is plaintiffs non-entitlement to regularization of the unauthorised constructions. If the petitioner wants, there is an effective remedy for him, by filing a suit including by impleading the municipality for a positive relief against the plaintiffs herein for demolition of unauthorised construction of 2nd and 3rd floors is not an answer to refuse the request of the proposed party as it amounts to encouraging multifarious litigations for same lis. So it is the discretion of the Court ultimately to be exercised from the wording of Order I Rule 10 (2) C.P.C.

14) Coming to the expression placed reliance by the revision petitioner in Ramesh Hiranand Kundanmal (supra), the Apex Court held that the Court has a discretion to direct a plaintiff, though dominus litis, to implead a person as a necessary party and the mere fact that a fresh litigation can be avoided is no ground to invoke the power under Order I Rule 10 in such cases if not necessary or proper party. It was in relation to the HPCL service station in the leasehold premises, part of which is unauthorized construction sought for demolition.

15) Coming to the expression of this Court in Neelam Ajit (supra) placed reliance by the implead petitioner before the lower Court there he was a neighbour to the building sought for demolition by the municipality and sought for impleadment as a

proper party alleging the construction of the building is by deviation to the sanctioned plan and the Municipal Corporation failed to take action for the said unauthorized construction and that effects the easementary rights of his building and thereby he is a property party to the suit. In that way, the proposed party was held as a proper party. However, the fact remains that merely because he is a proper party that itself is not a ground for impleadment automatically as per the expression of the Apex Court in ***Ramji Dayawala & Sons (P) Ltd., vs Invest Import***⁵.

16) Coming to the latest expression of the Apex Court in Anantha Reddy (supra) it was held on case on the scope of Order I Rule 10 (2) C.P.C that the Object of Order I Rule 10 (2) C.P.C to implead a third party to the suit is that the dispute in the suit would be resolved in the presence of all, in order to avoid multiplicity of proceedings. There must be some semblance of right to the proposed party if the petitioner violates the building plan without leaving setbacks, cellar etc., then certainly it would cause inconvenience to the neighbours. The proposed party is one of the neighbours. Therefore, to safeguard his interest, in view of the fact that he has got some semblance of right though no relief is claimed against him, he would be necessary and proper party to come on record. That is why the trial Court rightly impleaded him and in the revision, the High Court did not interfere in dismissing the same and held that the order is justified and there is nothing to interfere much less to review, for review sought for was even ended in dismissal before the High Court. The expression no doubt says the neighbour got some semblance of right and even

⁵ AIR 1981 SC 2085

not a necessary party, atleast as a property party to be impleaded to contest for the inconvenience he could suffer from the violations without leaving setbacks, cellar etc.,

17) In the case on hand, as notice for demolition of unauthorized construction of the 2nd and 3rd floors and part of demolition of constructions by deviations without setbacks of the ground and 1st floors issued by the Municipality and the implead petitioner is one of the purchasers of the portion of the 1st floor. In that view of the matter once the lower Court exercised its jurisdiction though not by referring to all these reasons and instead the proposed petitioner can be driven for a positive relief by filing a separate suit; when he wants to come on record to be impleaded, to contest against the continuation of the 2nd and 3rd floors of the plaintiffs on the portion of the 1st floor, he purchased, there is no flaw in the order to interfere.

18) Coming to the expression of the Apex Court in Mumbai International Airport (supra), arising out of S.L.P. No.2085 of 2009 dated 06.08.2010, at para No.8 of the judgment the ambit and scope of Order I Rule 10 CPC dealt with in saying; the general rule with regard to impleadment of parties is that, the plaintiff in a suit, being a 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) C.P.C which provides for impleadment of proper or necessary parties. After extracting the said rule, the Apex Court

observed that the necessary party is a person who ought to have been joined as a party to suit, for an effective decree that can be passed by the Court and if at all a necessary party is not impleaded, the suit is liable to be dismissed. The proper party who is not a necessary party, is a person whose presence would enable the court to effectively and adequately, adjudicate upon all matters in dispute of the suit, though he need not be a person in favour of or against him the decree is to be made. The expression for above conclusion mainly referred is ***Sumtibai vs Paras Finance Co***⁶ which in turn referred the three judge bench expression of the Apex Court in ***Kasturi vs Iyyamperuma***⁷ where it was observed that, a third party cannot be impleaded in a suit for specific performance if he has no semblance of title in the property in dispute, that would unnecessarily protract or obstruct the proceedings in the suit. However, the aforesaid decision will have no application where a third party shows some semblance of right or interest in the property in dispute. In Mumbai International Airport (supra) it is observed at para No.11 that there is no conflict between the decisions in Kasturi (supra) and Sumtibai (supra). The two decisions were dealing with different situations requiring application of different facets of sub-rule (2) of Rule 10 of Order I. It was observed that every judgment must be governed and qualified by the particular facts of the case in which such expressions are to be found; that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision and that even a single significant detail may alter the entire aspect; that is why there is always peril in treating

⁶ 2007 (10) SCC 82

⁷ 2005 (6) SCC 733

the words of a judgment as though they were words in a legislative enactment and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. The decisions in Ramesh Hirachand Kundanmal (supra) and **Anil Kumar Singh vs Shivnath Mishra**⁸ also explain in what circumstances persons may be added as parties.

19) It is thereafter observed in para No.12 of the judgment in Mumbai International Airport (supra) that 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 moto or on the application of the plaintiff or the defendant, or an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined even. It is therefrom observed at para No.12 that his addition will if alter the nature of the suit or introduce a new cause of action, it may dismiss the application, even if he is found to be a proper party. The Court has the discretion either to allow or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party, merely because he is a proper party. The observation at para No.13 is that in Kasturi (supra) and Sumtibai (supra) are with reference to the facts and circumstances of the respective cases. At para No.14, it is observed on fact that presence of the appellant is not necessary for passing an effective decree in the suit for specific performance, or is his presence necessary for complete and

⁸ 1995 (3) SCC 147

effective adjudication of the matters in issue in the suit for specific performance filed by the 1st respondent—plaintiff against the Airport Authority of India. The principle laid down therefrom in Mumbai International Airport (supra), is that it is the duty of the Court to implead a necessary party and it has to consider from the facts as to a proper party to be impleaded or not.

20) Here, undisputedly when entire property shown in plaint schedule in questioning the order of municipality by the proceedings after hearing and enquiry even for the proposed party sought for regularization in not considering and in ordering demolition since impugned, though the plaintiff has no present title so far as part of 1st floor and ground floors are concerned, which are only covered by deviations from the approved plan and the plaintiffs constructed 2nd and 3rd floors which are mainly to be impugned as covered by their notice contents that was rejected by the proceedings of the municipality impugned in the suit for ordering total demolition, when interest of the proposed party is also included in the suit by the plaintiff and from that when he wants to come on record and when his presence is required for effective adjudication of the lis and that too, when the trial Court exercised its discretion in the factual scenario, this court while sitting in revision cannot interfere with the impugned order as there is no illegality in the order of the lower Court much less to the prejudice of the plaintiffs as per the law laid down by the Apex Court in ***Shalini Shyam Shetty vs Rajendra Shanker Patil***⁹.

⁹ 2010 (8) SCC 329

21) Accordingly and in the result, the revision petitions are dismissed. No order as to costs.

22) Consequently, pending miscellaneous petitions, if any, shall stand dismissed.

Dr.JUSTICE B. SIVA SANKARA RAO

Dt.09.08.2016
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