

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.147 of 2015

ORDER:

This is a revision by the unsuccessful respondents/plaintiffs, under Article 227 of the Constitution of India, assailing the orders dated 8th of October, 2014 of the learned III Additional Junior Civil Judge, Visakhapatnam, passed in I.A.No.231 of 2013 in O.S.No.1032 of 2011 filed by the third parties/proposed defendants 2, 3, 4 and 5 under Order I Rule 10 (2) read with Section 151 of the Code of Civil Procedure, 1908, requesting for their impleadment as defendants 2 to 5 in the suit and respondents 2 to 5 in all interlocutory applications.

I have heard the submissions of Sri Koka Srinivasa Kumar, learned counsel appearing for petitioners, and of Sri M.Sree Rama Rao, learned counsel appearing for 1st respondent. None appears for respondents 2 to 5.

I have perused the material record.

The case of the proposed defendants in support of their case for impleadment as party-defendants, in brief, is this:

“The property originally belonged to the deceased sole plaintiff, B.Kameswara Rao, who is the husband of the 2nd plaintiff and the father of plaintiffs 2 and 3. He brought the suit against the sole defendant/Greater Visakhapatnam Municipal Corporation for permanent injunction not to demolish the plaint schedule shop rooms and for a declaration that the officials of the said Corporation, who are trying to demolish the plaint schedule property, are not entitled to do so without giving a notice by

following the procedure established under law. He did not implead the proposed defendants as parties to the said suit. The deceased sole plaintiff originally owned 260 square yards of land. He sold undivided 195 square yards under six sale deeds to the proposed defendants and others having retained undivided 65 square yards from out of the said property. The said six purchasers, including the proposed defendants, along with the deceased plaintiff, constructed a three-storied building on the existing RCC building under a development agreement. Accordingly, flats were constructed with the understanding that the open spaces should be enjoyed by all the six purchasers of flats. At the time of approval of the plan, the deceased plaintiff gave an undertaking to the Municipal Corporation that he would remove the existing shop rooms, which are situated in the common area of the flat owners, and also of the deceased plaintiff; he accordingly removed the shops and the multi-storied building was constructed as agreed upon and was named as Sri Sai Ganesh Enclave. Later, the deceased-plaintiff constructed the shop rooms in the place meant for common area and the cellar, which the flat owners were using since the inception. The demands of the proposed defendants made to the sole plaintiff to remove the said constructions were of no avail. The deceased-plaintiff openly threatened the proposed defendants by saying that the shop rooms were separately assessed, and, therefore, he is entitled to continue in the shop rooms. Further, he was using the shop rooms for running cement business under the name and style of Sri Vaishnavi Agencies. On account of the use of the shop rooms in the cellar for the said purpose, the same is causing traffic congestions, pollution and also health hazard to the inmates of the flats. Since the construction of shop rooms was

made in a fraudulent manner, when the sole defendant Corporation is taking steps for demolition, the suit was brought to prevent such demolition. The proposed defendants, who are having direct interest in the subject matter of the suit, are entitled to be impleaded as party-defendants 2 to 5, as their common interest is involved and as the subject property is a common area and cellar portion of Sri Sai Ganesh Enclave.”

The sole plaintiff died and the 3rd plaintiff, who is one of his legal heirs, filed counter on behalf of plaintiffs 2 to 4 and resisted the application *inter alia* contending as follows:

“While developing 195 square yards of property by effecting sales, the deceased-1st plaintiff retained 65 square yards of property; and, therefore, the subject matter of the suit is not a common area or the cellar of Sri Sai Ganesh Enclave. The proposed defendants, without any legal right, are claiming that the said property, which is the subject matter of the suit, is being used as a cellar and common area for the property they have purchased, which is not the subject matter of the suit. The proposed defendants are not entitled to claim the subject matter of the present suit as a common area or cellar. It is the exclusive property of the plaintiffs. The Municipal Corporation also assessed the property separately to tax. The allegations in the affidavit are made only for the purpose of seeking their impleadment. No inconvenience is being caused to the proposed defendants on account of the activity that is being carried out in the shop rooms of the plaintiffs. The petition is not *bonafide* and is liable to be dismissed.”

At the time hearing before the trial Court, no oral evidence was adduced by either of the parties. Exhibits P-1 to P-9 were marked on behalf of the proposed defendants. No documents were marked on behalf of plaintiffs. On merits, the trial Court allowed the petition. Aggrieved thereof, the plaintiffs filed this revision.

At the time of hearing, the learned counsel for the petitioners/ plaintiffs, while reiterating their pleaded case, which is already extracted supra, would contend as follows: “The suit is confined to the 65 square yards of property which was retained by Late Kameshwara Rao, the predecessor in interest of the plaintiffs. It has nothing to do with the remaining property of 195 square yards where Sri Sai Ganesh Enclave was constructed. The shop rooms are the exclusive property of the plaintiffs. The same was separately assessed to tax. When the Municipal Corporation attempted to demolish the shop rooms without following the procedure established by law, the suit was brought for declaration and consequential injunction not to demolish the property, which is neither cellar nor the common area of the said Enclave. Therefore, the proposed defendants have no right or interest in the present subject property. If the proposed defendants are impleaded, the scope of the suit will be enlarged and the plaintiffs will be forced to contest against the proposed defendants, which is not their intention. The order of the trial Court is erroneous and is liable to be set aside.”

Per contra, the learned counsel for the proposed defendants 2 to 5, while reiterating their pleaded case, which is already extracted supra, would

contend that the proposed parties are having direct interest in the suit schedule property, and that, therefore, the order of the trial Court is justified.

I have given detailed and thoughtful consideration to the facts and submissions.

Admittedly, the property of 260 square yards originally belonged to the deceased sole plaintiff, and out of the said extent, in respect of the undivided 195 square yards, he effected sales in favour of third parties and the 6 purchasers of the said extent along with the deceased plaintiff, developed it and, with the approval of the Corporation, constructed three upper floors on the existing RCC structure and the developed property was named as Sri Sai Ganesh Enclave. According to the plaintiffs, who are the legal representatives of the plaintiff, the remaining 65 square yards is the subject matter of the suit and it has nothing to do with the property sold out and developed. Whereas, according to the proposed defendants 2 to 5, the 65 square yards of property is the common area of the Enclave as per the approved plan; it is a cellar since inception; the deceased plaintiff agreed to remove the shops in the said area, and in fact, removed the same, but, later made constructions and is running a cement business, causing inconvenience to the inmates of the flats; since the property involved in the *lis* is a cellar cum common area of the flat owners including the proposed defendants 2 to 5, they are having direct interest in the subject matter of the suit, and therefore, for protecting their interest, they are entitled to be impleaded and that the issues involved in the suit are to be adjudicated in their presence. Though it is admitted that the property sold is an undivided 195 square yards, the learned counsel for plaintiffs would contend that the 65 square yards is

separately assessed and it is not a part of the cellar or common area as being contended by the proposed defendants. In the well considered view of this Court, the said aspects are to be adjudicated after full-fledged trial and not at this stage and in view of the fact that the property sold was undivided extent and there is an approved plan as being contended by the proposed defendants, *prima facie*, it appears that the proposed defendants have got considerable interest in the subject matter, and that therefore, they are proper and necessary parties for effective adjudication of the *lis* and that the plaintiffs' right over the constructions has to be decided in the presence of the proposed defendants 2 to 5 as they are denying the exclusive right of the plaintiffs in the subject matter of the suit and are *inter alia* claiming that it is part of the common area and cellar of Sri Sai Ganesh Enclave.

On the above analysis, this Court finds that the trial Court is justified in passing the order impugned and that the impugned order, therefore, brooks no interference.

Revision petition is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

M. SEETHARAMA MURTI, J

20th December 2016

ajr