

ORDER :

The present revision is filed aggrieved by the orders dated 04.03.2015 passed by the learned I Additional Junior Civil Judge, Rajahmundry in I.A. No.716 of 2014 in O.S. No.82 of 2014.

2) The petitioners are third parties to the suit O.S. No.82 of 2014, on the file of the I Additional Junior Civil Judge, Rajahmundry. The suit filed by the 1st respondent herein against the 2nd respondent herein as sole plaintiff and sole defendant respectively, for the relief of declaration that the impugned notice issued by the Municipality to remove the encroachment allegedly made by the plaintiff is illegal, arbitrary and unsustainable.

3) Undisputedly the plaintiff in O.S. No.82 of 2014 earlier maintained a suit in O.S. No.661 of 2012 on the file of IV Additional Junior Civil Judge, Rajahmundry only against the proposed parties herein as defendants 1 and 2. Said suit was filed for bare injunction alleging that the proposed parties herein were allegedly interfering with the plaintiff's possession and enjoyment. The claim of the proposed parties is that they got a right of access from every inch and corner to the public road within the municipal limits and they seek to come on record and the plaintiff in O.S. No.82 of 2014, no other than the plaintiff in O.S. No.661 of 2012, is trying to interfere with public right of access. The further contention is that they made a complaint by approaching the Lokayuktha and they came to know about the suit, which is maintained behind their back and only against the Municipality as sole defendant, to obtain some orders instead of the earlier suit for bare injunction with alleged interference pending intentionally not impleaded and thereby they are necessary parties to come on record.

4) As per Order I Rule 10(2) C.P.C, once necessary facts are before the Court, even no application is filed by parties, it is the duty of the Court to implead a necessary party within its power as contemplated by the provision. Apart from it, where it is the claim by any party to come on record, if it is shown that he is a necessary party, it is the duty of the Court to bring on record the party concerned atleast as a proper party if it is shown that his presence is one way necessary for affective adjudication though in his absence the suit can be disposed of as a proper party, the Court can exercise the

discretion to implead or not depending upon the nature of the lis and facts of the case. The distinction between necessary party and proper party is well laid down by the expression of the Apex Court in ***Vijay Pratap V. Sambhu Saran Sinha***^[1] in this regard. It requires no more repetition from the expression on this principle.

5) Coming to the facts again from the principle of law laid down therein, once the proposed parties are already impleaded as defendants in O.S. No.661 of 2012 filed by the present plaintiff for bare injunction with alleged interference in respect of the property and in relation to which the alleged encroachment notice for a portion given by the Municipality against the plaintiff and questioning the notice alleging as if there is no encroachment, the present suit is filed for declaratory relief without impleading the defendants in O.S. No.661 of 2012 as co-defendant to this suit O.S. No.82 of 2014. The proposed parties contend that having come to know of the suit proceedings, they choose to come on record more particularly from the Municipality though supposed to have issued the notice by holding prima facie encroachment remained exparte from there is a collusion between them.

Thus, in the present facts the proposed parties are one way necessary and atleast proper parties for the affective adjudication of the lis. Further, both the suits are required to be adjudicated by same Court commonly. The trial Court went wrong in dismissing the implead petition under a wrong premise as if the dispute only between the Municipality and the plaintiff and the proposed parties cannot come on record. It is for the plaintiff to establish his title over the property by showing there is no encroachment, that too when the proposed parties contest is to show the encroachment made by plaintiff and his disentitlement to any of the suit reliefs and the Municipality has to implement the notice by removal of the encroachment.

6) Having regard to the above, the revision petition is allowed by setting aside the order dated 04.03.2015 in I.A. No.716 of 2014 in O.S. No.82 of 2014 on the file of I Additional Junior Civil Judge, Rajahmundry and by allowing the application and by directing the trial Court to transfer the suit in O.S. No.82 of 2014 to the file of IV Additional Junior Civil Judge, Rajahmundry, where the suit O.S. No.661 of 2012 is pending for either simultaneous disposal or joint trial, after impleading the proposed petitioners as defendants 2 and 3 in the suit.

7) Consequently, miscellaneous petitions, if any, shall stand dismissed. There is

no order as to cots.

Dt.19.07.2016
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DR.JUSTICE B.SIVA SANKARA RAO

[\[1\]](#) AIR 1996 SC 2755