

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.28 of 2016

ORDER:

_____ This civil revision petition is filed under Section 115 of CPC challenging the order dated 05.10.2015 passed in I.A.No.206 of 2015 in A.S.No.26 of 2010 on the file of court of Family Judge-cum-IV Additional District Judge, Adilabad, wherein and whereby the petition filed by the petitioner under Order I Rule 10(2) of CPC was dismissed.

2. To avoid confusion, the parties will hereinafter be referred as they are arrayed in the I.A.

3. The facts, which are relevant for disposal of this civil revision petition, are as follows:

The respondent Nos.1 and 2 leased out the suit schedule property of an extent Ac.0.10 guntas in plot No.37/A near NH No.7, opposite to Rest House, Dwaraka Nagar, Adilabad town to the petitioner under lease agreement dated 10.8.1990. The respondent Nos.1 and 2 executed another lease deed in respect of the same property in favour of the petitioner on 12.3.1992 for a period of 15 years on a monthly rent of Rs.5,000/-. The petitioner has been running petrol bunk in the leased premises. While things stood thus, respondent Nos.1 and 2 filed O.S. No.31 of 2005 on the file of the court of Junior Civil Judge, Adilabad for eviction of the petitioner from the suit schedule property and for recovery of arrears of rent. After full-fledged trial, the trial court decreed the suit. Feeling aggrieved by the judgment and decree dated 21.7.2010, the petitioner preferred A.S. No.26 of 2010 on the file of the court of Family Judge-cum-IV Additional District Judge, Adilabad. Pending appeal, the petitioner filed I.A.No.206 of 2015 to implead "*the State of Telangana represented by the District Collector, Adilabad*" as respondent No.5 in the appeal contending that the suit schedule land belongs to the

Government. Respondent Nos.1 and 2 filed the counter opposing the petition. Respondent No.5 also filed counter. After having thoughtful consideration to the material available on record, the court below dismissed the petition. Hence, the present civil revision petition.

4. Heard the learned counsel for the petitioner, learned counsel for respondent Nos.1 and 2 and learned counsel for respondent No.4. The contention of learned counsel for the petitioner is two fold:

(1) the court below failed to appreciate that the property in question is Government land; and

(2) the court below misconstrued the scope of Order I Rule 10 CPC and dismissed the petition on erroneous grounds.

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Per contra, learned counsel for the respondent Nos.1 and 2 submitted that the court below rightly considered the scope of Order I Rule 10 CPC and dismissed the petition. He further submitted that the findings recorded by the court below are supported by cogent and valid reasons and there are no reasons to interfere with the same.

5. Basing on the rival contentions, the points that arise for determination in this revision petition are:

(1) Whether respondent No.5 is necessary or proper party to the proceedings or not?

(2) Whether there is any illegality or irregularity in the order of the court below which warrants interference of this court?

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Point Nos.1 and 2:

11. Both the points are interlinked with each other; hence, I am inclined to address these two points simultaneously in order to avoid recapitulation of facts and evidence.

12. It is an admitted fact that the petitioner has been running petrol bunk in the suit schedule property from 1990 onwards by paying monthly rent of Rs.5,000/- per month. For one reason or the other, the petitioner did not choose to pay the rent regularly to respondent Nos.1 and 2, which forced them to file O.S.No.31 of 2005 for eviction of the petitioner from the suit schedule property. At any point of time,

respondent No.5—the Government has not issued notice either to the petitioner or respondent Nos.1 and 2 stating that the suit schedule property belongs to it. In the counter, respondent No.5 has not taken a specific stand that there is a dispute between the petitioner and respondent Nos.1 and 2 with regard to regularization. If really the land belongs to the Government, the same might have been reflected in the counter filed by respondent No.5.

13. A perusal of the record reveals that the petitioner filed O.S.No.42 of 2004 on the file of the court of Senior Civil Judge, Adilabad for recovery of Rs.9,54,120/- from the respondent Nos.1 and 2, as he paid the same to them towards rent of the suit schedule property. The contention of the petitioner in the said suit is that the suit schedule property belongs to the Government. The learned Senior Civil Judge, Adilabad dismissed the suit holding that it is not the Government land. At the time of the arguments, the learned counsel for the petitioner submitted that he is not aware whether or not the petitioner filed appeal challenging the judgment and decree in O.S. No.42 of 2004. If really the petitioner filed appeal, the same might have reflected in the affidavit filed in support of the petition filed under Order I Rule 10 CPC. The affidavit does not contain such information. The /is involved between the parties to O.S.No.31 of 2006 is whether there is jural relationship of landlord and tenant between the petitioner and respondent Nos.1 and 2. The trial court gave a specific finding that there is jural relationship between the petitioner and respondent Nos.1 and 2. It is a settled principle of law that a person who is having interest or semblance of interest in the subject matter of the suit is entitled to file petition under Order I Rule 10 CPC. If really the Government has any interest or semblance of interest in the suit schedule property, it might have filed petition under Order I Rule 10 CPC during pendency of the suit or at least in the appeal. As rightly pointed out by the learned counsel for respondent Nos.1 and 2, if the

petition is allowed certainly it would amount to enlarging the scope of the suit filed for eviction of the tenant and recovery of arrears of rent, which is not permissible under law.

14. A necessary party is one whose presence is indispensable to the constitution of the suit, against whom the relief is sought and without whom no effective order can be passed. A proper party is one in whose absence an effective order can be passed, but whose presence is necessary for a complete and final decision on the question involved in the proceeding. A duty is cast on the court to curb vexatious and frivolous petitions, which were filed with an ulterior motive of protracting the litigation by certain persons under the guise of *bona fide* parties to the proceedings. One of the objects of Order I Rule 10(2) CPC is to avoid multiplicity of proceedings. That does not mean a party to the proceedings can be permitted to file frivolous petitions under Order I Rule 10(2) CPC and drag on the proceedings. The petitioner has not raised even his little finger during the pendency of the suit and till 2015, when the appeal is filed in 2010. Viewed from this angle, respondent No.5 is not necessary or proper party to the proceedings.

15. To resolve the issue, this court is placing reliance on the following decisions: --

Vidur Impex & Traders (P) Ltd., v Tosh Apartments (P) Ltd. ^[1]

Para 41.1 to 41.4 and 41.6 reads as follows:

41.1. The court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the court is necessary for effective and complete adjudication of the issues involved in the suit.

41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.

41.3. A proper party is a person whose presence would enable the court to completely, effectively and properly

adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

41.4. If a person is not found to be a proper or necessary party, the court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

41.5.

41.6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the court or the application is unduly delayed then the court will be fully justified in declining the prayer for impleadment.

Mumbai International Airport (P) Ltd. v. Regency Convention

Centre & Hotels (P) Ltd. ^[2]. Para 25 reads as under:

25. In other words, the court has the discretion to 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.

Razia Begum v. Sahebzadi Anwar Begum ^[3]. Relevant portion in para 24 reads as under:

Under Order 1 Rule 10 of the Civil Procedure Code the court has the power to pass orders regarding the adding of parties or striking off the name of a party. Whether the exercise of this power is a matter of jurisdiction or of discretion appears to have been the subject of difference of opinion in the courts of law here and in England. Whichever view may be correct it is patent that resort to the exercise of such power could only be had if the court is satisfied that it is necessary to make an order under Order 1 Rule 10, in order to effectually and completely adjudicate upon and settle all questions involved in the suit. The court ought not to compel a plaintiff to add a party to the suit where on the face of the plaint the plaintiff has no cause of action against him.

16. The petitioner has suffered the decrees in O.S.No.31 of 2005 and O.S.No.42 of 2004. By the decree and judgment in O.S.No.31 of 2005, the eviction of the petitioner was ordered and by the judgment and decree in O.S.No.42 of 2004, the pleas of the petitioner that respondent No.5 is owner of suit schedule property and that respondent Nos.1 and 2 are liable to repay the rent amount were

rejected. The petitioner being a party to O.S. No.42 of 2004, the findings recorded in that suit are binding on him unless and until the said findings are set aside by the appellate court. If the petition is allowed, the nature of the suit will be changed from “*eviction of tenant and recovery of arrears of rent*” to “*declaration of title*”, which is not permissible under law. Taking into consideration the facts and circumstances of the case, the possibility of filing the petitions of this nature, particularly at the stage of conclusion of appeal, with an ulterior motive to drag on the proceedings as far as possible cannot be ruled out completely. If the civil court entertains this type of petitions, certainly it sends wrong signals to the litigant public that they can stall the proceedings by filing frivolous petitions. While deciding the petitions of this nature, the court has to take more care in order to ascertain the hidden agenda of the parties by lifting the veil. If the material available on record clearly demonstrates that the petitions are filed with ulterior motive, the court has to deal with them with iron hand. The court below has considered all these aspects elaborately and arrived at just conclusion that the petition is not maintainable. The court below has assigned cogent and valid reasons to its findings. I am fully agreeing with the findings recorded by the court below.

17. While exercising the jurisdiction under Section 115 CPC, this court cannot lightly interfere with the order passed by the trial court unless there is illegality or irregularity apparent on the face of the record. Viewed from factual or legal aspects, there is no illegality or irregularity in the order passed by the trial court. There are no grounds much less valid grounds to interfere with the well considered findings recorded by the court below. The points are, accordingly, answered against the petitioner.

18. In the result, the civil revision petition is dismissed. No costs. Miscellaneous petitions if any pending in the revision petition shall stand closed.

March 04, 2016.

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[\[1\]](#) (2012) 8 SCC 384

[\[2\]](#) (2010) 7 SCC 417 : 2010 (5) ALD 24 (SC)

[\[3\]](#) 1959 SCR 1111 = AIR 1958 SC 886