

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.3223 & 3250 OF 2016

COMMON ORDER:

These two Civil Revision Petitions are filed challenging the orders in I.A.No.505 of 2015 in O.S.No.85 of 2014 and I.A.No.506 of 2015 in I.A.No.48 of 2014 in the said suit, dated 11.03.2016, passed by the IV Additional Junior Civil Judge, City Civil Court, Hyderabad, whereby the petitions filed by the petitioners under Order I Rule 10 (2) C.P.C. were dismissed holding that the petitioners were neither proper nor necessary parties to the suit.

2. It is the case of the petitioners that the 1st respondent filed the suit for injunction simplicitor against the 3rd respondent/ Greater Hyderabad Municipal Corporation (Corporation) to restrain the Corporation and its employees from interfering with the construction i.e., fifth floor. The petitioners purchased the entire flats in the apartment and it is their case that on account of construction of fifth floor without obtaining approval from the Corporation, their rights are affected in the undivided share of site. In such circumstances, the petitioners filed W.P.No.20886 of 2015 and the same was allowed by this court by order dated 13.07.2015 and in pursuance of the order of this Court in the Writ Petition, the Corporation issued proceedings dated 30.09.2015/01.10.2015 making it clear that the 1st respondent deviated the approved plan and commenced construction of fifth floor over the stilt + four upper floors and a room in stilt floor unauthorisedly and illegally without having valid permission from the Corporation. The

1st respondent filed suit against Corporation for bare injunction to restrain the Corporation and its employees from removing the unauthorized construction alleging that the employees of the Corporation came to the schedule property on 18.01.2014 and threatened to demolish the suit schedule property without assigning any proper reason and without issuing any notice.

3. During the pendency of the suit, the present petitioners filed the interlocutory applications before the trial Court to implead them both in the suit as well as in the interlocutory applications, as they are proper and necessary parties to the suit to adjudicate the real dispute between the parties reiterating the contentions referred to above.

4. The respondents did not file any counter before the trial Court.

5. The trial Court, upon hearing the argument of both the counsel, came to the conclusion that the suit is only for injunction simplicitor and the rights of the petitioners cannot be decided in a suit for bare injunction and the remedy available to them is somewhere and not in the suit filed by the 1st respondent.

6. During hearing, Sri Sri Kanakaraju, learned counsel representing on behalf of Sri P.V.S.S.S. Rama Rao, learned counsel for the petitioners in both the revisions, contended that the petitioners, being the owners of the property of the entire apartment, are interested in the property and on account of raising such construction in the fifth floor and sale of the same without

obtaining any prior permission from the Corporation, their title to undivided share in the property is affected and that the Corporation is working in hand-in-glove with the 1st respondent and therefore, they are proper and necessary parties to the suit and the interlocutory applications before the trial Court.

7. In support of his contention, learned counsel has placed reliance on a judgment of this Court in **Neelam Ajit v. V. Suresh Reddy and another**¹ and the judgment of the Hon'ble Apex Court in **N. Anantha Reddy v. Anshu Kathuria and others**². On the strength of the principles laid down in the above judgments, the petitioners counsel contended that the petitioners are necessary and proper parties to the suit and prayed to allow the revisions by setting aside the order passed by the trial Court.

8. Per contra, Sri Ch. Praveen, learned counsel for the respondents, supported the order of the trial Court in all respects, while reiterating the findings recorded by it.

9. Considering the material available on record, the point that arises for consideration is:

“Whether the petitioners are necessary parties to the suit filed by the 1st respondent against the 3rd respondent – Corporation claiming permanent injunction restraining the Corporation and its employees from removing the structures raised in the fifth floor of the apartment?

10. **POINT:-** Indisputably, the suit was filed for injunction simplicitor specifically alleging in paragraph No.4 of the

¹ 2005 (5) ALT 471

² (2013) 15 SCC 534

plaint that the officials of the Corporation came to the suit site on 18.01.2014 and threatened to demolish the suit schedule property without assigning any proper reason and without issuing any notice and the relief of permanent injunction is *in personum* and such decree is not binding on a third party. However, the main grievance of the petitioners is that their rights are being affected on account of construction of the fifth floor in the undivided share in the property. The scope of trial in a suit for injunction simplicitor is limited and the Court is expected to record a finding under Section 38 of the Specific Relief Act and if for any reason, the Court comes to the conclusion that the construction of fifth floor in the apartment is against law, then the Court can grant a permanent injunction restraining the employees of the Corporation from interfering with the construction of fifth floor in the apartment. The main reason to come on record by filing a petition under Order I Rule 10 (2) C.P.C. is affecting their rights in undivided share, as stated supra, whose rights cannot be decided in a suit for bare injunction.

11. Order I Rule 10 (2) C.P.C. reads as under:

“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.”

12. The person who is proper or necessary party for adjudication of all questions involved in the suit alone be allowed to come on record by filing a petition for impleadment under Order I Rule 10 C.P.C. In such case, who is proper party or who is necessary party is a relevant aspect. A similar question came up before this Court in **S.M.M. Jahangir Ali Khan v. Markazi Qutub Khana (Library), Mohammedia/Jamat-e-Ahle Hadees (Office), Hyderabad and another**³. In the said judgment, this Court by relying on a judgment of the Hon'ble Supreme Court in **Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay and others**⁴ held that the discretion lies with the Court and the Court may permit impleadment of a third party, whose easementary right is affected in a suit filed questioning the notice issued under Section 452 (2) of the Greater Hyderabad Municipal Corporation Act, 1955.

13. But, in a later judgment the Hon'ble Supreme Court in **Mumbai International Airport Private Limited v. Regency Convention Centre and Hotels Private Limited and others**⁵ in paragraphs 13, 14 and 15 elaborately discussed as to who is the proper and necessary party. In paragraph No.15 of the said judgment, the Supreme Court held as under:

“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

³ 2016 (3) ALD 247

⁴ (1992) 2 SCC 524

⁵ (2010) 7 SCC 417

dismissed. A “proper party” is a party who though not a necessary party, is a person whose presence would be enable the court to completely, effectively and adequately adjudicate upon all the 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 proper or necessary party, the court has not 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.”

14. In paragraph No.13 of the same judgment, the Apex Court held 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 I Rule 10 (2) of Code of Civil Procedure (‘Code’ for short), which provides for impleadment of proper or necessary party.”

15. In view of the definition of the words ‘proper party’ or ‘necessary party’ as laid down by the Hon’ble Apex Court, now I shall examine whether the petitioners are proper or necessary parties to adjudicate the issues involved in the suit pending before the trial Court.

16. The suit was filed only for injunction simplicitor making a specific allegation that the officials of the Corporation are threatening to interfere with the constructions without assigning

any proper reason and without issuing any notice. In such a case, the right of the petitioners/proposed parties that is undivided share in the site cannot be decided. Even otherwise, in the absence of petitioners, the Court can pass an effective decree adjudicating the questions involved in the suit. Hence, the petitioners are neither proper nor necessary parties to the suit.

17. Learned counsel for the petitioners has drawn the attention of this Court to two judgments referred to above i.e., **Neelam Ajith** (1 supra), wherein a third party claimed easementary right and on account of construction raised by the plaintiff in the suit, his right of easement was infringed. Therefore, he is a proper and necessary party to such suit. The Single Judge of this Court basing on the order in C.R.P.No.4600 of 1982 dated 25.02.1983 between **Bhagwandas and others v. Harish Chetwal and others** concluded that whose easementary right is affected on account of construction, he is a proper and necessary party in a suit for injunction. In the same matter, review petition was filed and the matter went up to the Hon'ble Apex Court and the Hon'ble Apex Court in Appeal No.10799 - 10780 of 2013 held at page No.8 as under:

“No doubt, no relief is sought for against the proposed party in the suit. 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 set backs, 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 as a party to the suit and I.A. and there are no grounds to interfere with the same. The revision is devoid of merits and is liable to be dismissed.”

18. The Apex Court totally supported the order passed by this Court in the judgment. In the present facts of the case, on account of construction of fifth floor, if the rights of the petitioners are greatly affected and in such case, their remedy is to file a separate suit for appropriate relief and they are not entitled to claim any remedy in a suit filed by the 1st respondent against the Corporation for injunction simplicitor. No doubt, the reason for incorporating Order I Rule 10 C.P.C. is to avoid multiplicity of litigation, but the rights of the parties cannot be decided in the present suit as the suit was filed against the Corporation paying a meager amount of Court Fee where the title cannot be decided and on the basis of the claim pending before the trial Court by paying meager amount of Court Fee paid under Section 26 of the Andhra Pradesh Court Fee and Suits Valuation Act, 1956, the rights of the plaintiff cannot be decided. Therefore, the principle laid down in the above judgment has no application to the present facts of the case since the remedy of the petitioners is to file a separate suit for declaration of their rights in the undivided share of their property, but their rights cannot be decided in a suit for bare injunction. Hence, I find no ground to interfere with the orders impugned in these revisions and the revisions are liable to be dismissed.

19. The Civil Revision Petitions are accordingly dismissed. However, liberty is given to the petitioners to redress their claim in independent proceedings before an appropriate Court. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in the Civil Revision Petitions shall stand closed.

M.SATYANARAYANA MURTHY, J

Date:07.09.2016

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