

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.3298 & 3299 OF 2016

COMMON ORDER:

These two Civil Revision Petitions are filed by the plaintiff challenging the orders, dated 01.06.2016, in I.A.No.116 of 2016 and I.A.No.117 of 2016 in I.A.No.902 of 2015 in O.S.No.2737 of 2015 passed by VI Junior Civil Judge, City Civil Court, Hyderabad, whereby, the petitions filed by the 1st respondent herein/proposed respondent, under Order I Rule 10 read with Section 151 C.P.C., were allowed.

2. For convenience of reference, the ranks given to the parties before the trial Court in I.A.Nos.116 and 117 of 2016 in O.S.No.2737 of 2015 will be adopted throughout the order.

The petitioner filed a complaint against the 1st respondent - plaintiff before the Greater Hyderabad Municipal Corporation (Corporation) – the 2nd respondent for raising illegal construction over the suit schedule property without obtaining any permission from the Corporation. M/s. Chaitanya Welfare and Development Society also lodged a complaint before the 2nd respondent to the same effect and the said Society also filed W.P.No.32912 of 2015 and obtained interim order in W.P.M.P.No.42482 of 2015 and suppressing the said fact the 1st respondent obtained interim order against the Corporation. It is further stated that the petitioner is residing separately for the past several years and the property is the joint family property and he made oral demands for partition with his family members, but the 1st respondent did not cooperate

for the same. Hence, the petitioner was constrained to file O.S.No.554 of 2014 for partition and separate possession and he also filed C.C.No.1983 of 2003 on the file of IX Additional Chief Metropolitan Magistrate, Hyderabad, for the offence punishable under different provisions of I.P.C. Hence, the petitioner is proper and necessary party to the suit and the interlocutory applications.

3. The 1st respondent filed counter *inter alia* stating that he was not a party to the Writ proceedings before this Court and had no knowledge of filing of the petitions and the orders passed therein and denied filing of complaint, but admitted filing of the partition suit and stated that the petitioner is neither necessary nor proper party to the suit as well as to the interlocutory applications and prayed for dismissal of the petitions.

4. Basing on the said pleadings, the Court below, by impugned orders, dated 01.06.2016, allowed the petitions. Aggrieved by the same, the present revisions are filed by the 1st respondent – plaintiff.

5. Sri Vedula Srinivas, learned counsel for the revision petitioner, submits that the revision petitioner filed suit for grant of perpetual injunction restraining the Corporation from interfering with the construction, whereas the 1st respondent filed O.S.No.554 of 2014 for partition and separate possession and the subject matter of both the suits is different. It is an undisputed fact that the revision petitioner filed suit for injunction to restrain the officials of the Corporation from interfering with the construction of

house bearing No.9-1-34/15/A/72 & 73, whereas the 1st respondent filed suit for partition in O.S.No.554 of 2014 claiming partition of the property bearing No.9-1-34/15/A/74 & 75. Thus, the dispute involved in both the suits is not one and the same and they are claiming right in two different properties. Therefore, basing on the suit filed for partition of property in respect of different house numbers, he cannot come on record as a defendant in a suit filed for injunction by the revision petitioner against the Corporation, who issued notice under Section 452 (2) of the Greater Hyderabad Municipal Corporations Act, 1955 complaining construction of building without obtaining prior permission or approval as required under Building Bye-laws. Therefore, the dispute between the Corporation and the revision petitioner is limited and the Court is required to decide as to whether perpetual injunction can be granted restraining the officials of the Corporation, if any, in the property bearing Door No.9-1-34/15/A/72 & 73, but not in respect of house No.9-1-34/15/A/74 & 75.

6. Learned counsel for the 1st respondent contended that a third party can implead himself by filing a petition under Order I Rule 10 (2) C.P.C., if his rights are infringed on account of unauthorized construction. He has drawn the attention of this Court to the judgment of this Court in **Neelam Ajit v. V. Suresh Reddy and another**¹, wherein this Court held that when easementary right of the proposed party is infringed, he can

¹ 2005 (5) ALT 471

come on record and raise objection for grant of relief. He also relied on the judgment of the Honourable Supreme Court in **N. Anantha Reddy v. Anshu Kathuria and others**². At the end of paragraph No.7 of the judgment, the Honourable Supreme Court, by relying on the judgment in **Naresh Ratiwal v. N. Anantha Reddy (C.R.P.No.2870 of 2010 dated 25.10.2010)**, held as under:

“No doubt, no relief is sought for against the proposed party in the suit. The object of Order I Rule 10 (2) CPC 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 in the property. 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 property 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.”

7. In the present case, the contention of the 1st respondent is that the revision petitioner constructed building without obtaining prior permission, but he did not complain about violation of any building plan like setbacks etc., which infringe the right of the 1st respondent herein.

² (2013) 15 SCC 534

8. In **Mumbai International Airport Private Limited v. Regency Convention Centre and Hotels Private Limited and others**³, the Honourable Supreme Court in paragraph Nos. 13, 14 and 15 elaborately discussed as to who is the proper and necessary party. In paragraph No.15 of the said judgment, the Honourable 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 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.”

9. In paragraph No.13 of the same judgment, the Honourable 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

³ (2010) 7 SCC 417

short), which provides for impleadment of proper or necessary party.”

10. Learned counsel for the revision petitioner contended that the 1st respondent is neither proper nor necessary party and therefore he is not entitled to come on record as defendant to defend the suit filed by the revision petitioner against the Corporation. He has drawn the attention of this Court to a judgment of the Honourable Supreme Court in **Vidur Impex and Traders Private Limited and others v. Tosh apartments Private Limited and others**⁴, wherein the Honourable Apex Court from paragraph Nos.41 to 41.6 laid down certain guidelines regarding who is proper and necessary party to the suit. The relevant paragraphs read as under:

“41 Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

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.

⁴ (2012) 8 SCC 384

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 In a suit for specific performance, the court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

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 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.”

11. In view of the principles laid down in the above judgment and the limited scope of trial in a suit filed for bare injunction or injunction simplicitor, the 1st respondent, whose rights are not infringed in any way, is neither a proper nor a necessary party. On the other hand, the 1st respondent filed a suit for partition of a different property claiming it to be a joint property. When the 1st respondent filed suit for partition claiming share in respect of different property, he is not entitled to come on record as a proper and necessary party in a suit filed for bare injunction. *Prima facie*, the 1st respondent has no semblance of right in the suit schedule property to implead himself as a necessary party to the suit, but the trial Court based on the pendency of the suit for partition and as the revision petitioner is raising construction without obtaining prior permission, even without finding out infringement of any semblance of right to the proposed party i.e., the 1st respondent herein, allowed the petitions without considering the necessity of the 1st respondent to

adjudicate the suit pending before it effectively. Thus, the trial Court committed an error in allowing the impugned petitions.

12. Accordingly, the Civil Revision Petitions are allowed setting aside the impugned orders, dated 01.06.2016, passed in I.A.No.116 of 2016 and I.A.No.117 of 2016 in I.A.No.902 of 2015 in O.S.No.2737 of 2015 passed by VI Junior Civil Judge, City Civil Court, Hyderabad. There shall be no order as to costs.

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

Date:12.09.2016

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M.SATYANARAYANA MURTHY, J

