

**THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

**CIVIL REVISION PETITION No.3827 OF 2016**

**ORDER:**

This revision petition, under Article 227 of the Constitution of India, is filed challenging the Order dated 03.06.2016, in I.A. No.328 of 2015 in O.S. No.2272 of 2014, passed by the IV Junior Civil Judge, City Civil Court, Hyderabad, whereby the petition filed under Rule 10 of Order I of the Code of Civil Procedure, 1908 (for short, 'CPC') was dismissed holding that the petitioner is neither proper nor necessary party to the suit; raising several contentions, mainly contending that the sole defendant-Municipal Corporation remained *ex parte* in the suit and the matter is posted for *ex parte* evidence of the plaintiffs, and that he also filed another suit for partition of the property involved in the present suit and other reliefs, since a co-parcener is entitled to share in the property, on which the construction was raised, but the construction is not in accordance with the approved plan, the trial court committed an error in dismissing the petition, hence prayed to set aside the impugned order and permit him to come on record as second defendant under Rule 10 of Order I of CPC.

The main contention of the revision petitioner before this Court is that plaintiffs, who are respondents 1 and 2 herein, created a Gift Settlement Deed in respect of joint family property and obtained necessary permission from the defendant-Municipal Corporation and started construction of the building in the schedule property, however, the defendant-Municipal

Corporation having found deviation of plan issued notice under Sections 452 and 461 of the Hyderabad Municipal Corporation Act, 1955 complaining construction of building in deviation of plan sanctioned by it, and thereupon the plaintiffs filed the suit for injunction simplicitor restraining the defendant-Municipal Corporation from demolition without any prior notice or intimation. The defendant-Municipal Corporation is contesting the suit. But now it is brought to the notice of this Court that Municipal Corporation remained *ex parte* in the trial court.

It is the specific contention of the revision petitioner that he filed a suit in O.S. No.344 of 2012 on the file of the Court of II Additional Chief Judge, City Civil court, Hyderabad, for partition and other reliefs and it is pending. Thus, the revision petitioner has got interest in the property. Therefore, he is proper and necessary party to the suit and prayed to permit him to come on record as second defendant.

The plaintiffs, who are respondents 1 and 2 herein, filed counter denying the material allegations *inter alia* contending that the suit is only for perpetual injunction against the defendant-Municipal Corporation and no relief is sought against the present revision petitioner, who seeks permission of this Court to come on record, and therefore he is neither proper nor necessary party, and prayed to dismiss the petition.

The trial court, upon hearing argument of both the counsel, dismissed the petition holding that the petitioner is neither proper nor necessary party.

The revision petitioner filed a petition seeking permission to come on record as second defendant in the suit on the ground that the construction of the building is in deviation of approved plan and it would infringe his right to claim partition in the schedule property. Therefore, he is proper and necessary party and the main contention of the revision petitioner before this Court is that if the construction is completed, it is difficult for him to get a final decree to be passed and allotment of his due share in the constructed building.

An identical 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**<sup>1</sup> wherein the party claimed easmentary right over the part of the land, but the principle is regarding impleadment of the party to the suit filed for perpetual injunction against the Municipal Corporation.

Undisputedly, plaintiffs, who are respondents 1 and 2 herein, started construction of the building and filed suit for injunction simplicitor against the defendant- Municipal Corporation questioning the notice issued under Sections 452 and 461 of the Hyderabad Municipal Corporation Act, 1955 and if really the revision petitioner is interested in the property, nothing prevented him to file a petition to obtain interim injunction in the suit bearing O.S. No.344 of 2012 on the file of the Court of II Additional Chief Judge, City Civil Court, Hyderabad. Instead of filing such petition, the present petition

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<sup>1</sup> 2016(3) ALD 247

- 4 -

is filed to get himself impleaded as second defendant under Rule 10 (2) of Order I of CPC as proper and necessary party to the suit.

A similar question came up before the Apex Court in **Mumbai International Airport Private Limited v. Regency Convention Centre and Hotels Private Limited and others**<sup>2</sup>. At paragraphs 13, 14 and 15 of the said Judgment, the Apex court discussed as to who is proper or necessary party.

At paragraph 13 of the said judgment, the Apex Court held as follows:

“ 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”.

And at paragraph 15 of the said Judgment the Apex Court held as follows:

“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 enable the court to completely, effectively and adequately adjudicate upon all 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

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<sup>2</sup> (2010) 7 SCC 417

- 5 -

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 property party to the suit for specific performance."

In view of the principles laid down in the above Judgment, in a suit filed by the plaintiffs, alleged owners of the property, against the defendant-Municipal Corporation challenging the notices issued under Sections 452 and 461 of the Hyderabad Municipal Corporation Act, 1955, the question to be decided is, whether notices under Sections 452 or 461 of the Hyderabad Municipal Corporation Act, 1955 is valid or not? and if so, construction, if raised in deviation of the approved plan, is liable to be demolished?

But, here the revision petitioner claimed share in the property, upon which the construction is being raised, he filed an independent suit in O.S. No.344 of 2012 pending on the file of II Additional Chief Judge, City Civil Court, Hyderabad, claiming partition and other consequential reliefs. In such case, remedy open to the petitioner is only to pursue his remedies in pending suit since he is neither proper nor necessary party to the suit for injunction simplicitor against the Municipal Corporation and its employees and the principle laid down by the Apex Court in **S.M.M. JAHANGIR ALI KHAN**'s case has no application to present facts of the case.

Hence, I find that the revision petitioner is neither proper nor necessary party to the suit and the trial court rightly come



- 6 -

to a just conclusion declining to allow the revision petitioner herein to come on record as second defendant exercising its discretion. Therefore, I find no ground warranting interference of this Court.

Accordingly, the revision petition is dismissed. No costs.

The counsel for the revision petitioner at this stage requested to make an observation that the revision petitioner can avail his remedies.

The scope of the revision is limited and this Court is required to decide, whether the Order under challenge is in accordance with law or not. In such case, the Court is not required to give liberty to the petitioner to prosecute any other proceedings. However, he is entitled to redress his remedy in an appropriate forum subject to permissibility under law.

Miscellaneous petitions, if any, pending in this revision petition, shall stand closed.

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**M. SATYANARAYANA MURTHY, J**

Date: 19.09.2016  
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