

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

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**C.R.P.No.1405 of 2016**

**ORDER:**

This Civil Revision Petition, under Article 227 of the Constitution of India, is preferred against the order passed by the II Additional Senior Civil Judge, Visakhapatnam in I.A.No.619 of 2015 in O.S.No.255 of 2015 dated 18.01.2016. The petitioner herein is the defendant in O.S.No.255 of 2015, and the petitioner in I.A.No.619 of 2015. The said I.A. was filed, under Order I Rule 10 C.P.C, to implead Punjab National Bank, Dwaraka Nagar, Visakhapatnam as the 2<sup>nd</sup> defendant in the suit.

The petitioner claims to have offered his property as security for the loan taken by their sister concern M/s.Srinivasa Homes from Punjab National Bank. On M/s.Srinivasa Homes defaulting in repayment of the loan, their account is said to have been declared as a Non Performing Asset, and Punjab National Bank is said to have initiated proceedings under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and to have taken possession of the subject property.

It is the petitioner's case that, as sale of some other property resulted in the entire loan borrowed by M/s.Srinivasa Homes being cleared, the 5<sup>th</sup> respondent herein ought to have delivered possession of the subject property back to them. Sri R.Raghunandan, learned Senior Counsel appearing on behalf of the petitioner, would submit that a writ petition would be filed shortly seeking a direction to Punjab National Bank to re-deliver possession of the subject land to the petitioner herein.

O.S.No.255 of 2015 was filed by the 1<sup>st</sup> respondent herein seeking permanent injunction restraining the petitioner herein from interfering with their peaceful possession and enjoyment over the plaint schedule property. The I.A, filed seeking temporary injunction, is said to be pending on the file of the Court below. Contending that possession of the subject property was with Punjab National Bank, and not with them, the petitioner herein filed I.A.No.619 of 2015, under Order I Rule 10 C.P.C, to implead Punjab National Bank as a defendant in the suit.

By the order under revision, the Court below held that in order to

prove that the plaintiffs were not in possession and enjoyment of the property, the petitioner wanted to establish that the subject property was in possession and enjoyment of Punjab National Bank which had filed a counter in the I.A. stating that the application should be dismissed; as Punjab National Bank was not inclined to implead themselves as a party to the suit, it was always open to the petitioner to examine officers of the Punjab National Bank as witnesses and establish that it is Punjab National Bank which is in possession and enjoyment of the property, and not the plaintiffs; if the facts are borne out from the record, there is no need to implead the proposed party to establish the fact; it is for the plaintiffs to choose a person against whom they should seek relief; they cannot be compelled to implead persons, unless they are necessary and proper parties; failure on the part of the plaintiffs to implead a necessary party would result in the dismissal of the suit; as the suit was for injunction simplicitor, it is only those who were obstructing possession and enjoyment, that could be arrayed as defendants, and not others who were interested in the property; as the petitioner claims not to be in possession and enjoyment of the suit schedule property, he need not have any anxiety to see that the proposed party is brought on record as another defendant; and the petitioner was not entitled to bring the proposed party as the 2<sup>nd</sup> defendant in the suit.

Sri R.Raghunandan, learned Senior Counsel, would submit that, failure to array Punjab National Bank as a defendant in the suit, would enable the respondent-plaintiffs to encroach upon the land which belongs to the petitioner herein; as they are admittedly not in possession, and it is Punjab National Bank which is in possession of the suit schedule land, they ought to have contested the suit, and thwarted any attempts by the respondent-plaintiffs to interfere with their possession over the suit schedule property; and failure to implead Punjab National Bank as a party to the suit may result in the petitioner's rights, over the subject land, being adversely affected.

I must express my inability to agree. As has been rightly pointed out by the Court below, the respondent-plaintiffs had sought an order of injunction against the petitioner herein. The said order would not bind Punjab National Bank unless it is a party to such proceedings. The

interlocutory application, for grant of temporary injunction, is said to be still pending before the Court below, and it is always open to the petitioner to contest the same. Even if an order of injunction is granted and, under the guise of such an order, the respondent-plaintiffs are presumed to intend interfering with and in encroaching upon the petitioner's land, any order passed even in the suit would not preclude the petitioner herein from seeking delivery of possession later. It would be wholly inappropriate for this Court to delve on this aspect any further, as the interlocutory application, for temporary injunction, is said to be pending before the Court below.

Suffice it to make it clear that since the jurisdiction, which this Court exercises under Article 227 of the Constitution of India, is limited and, as the order passed by the Court below can neither be said to suffer a patent illegality nor can the petitioner herein be said to have suffered substantial injustice thereby, I see no reason to exercise jurisdiction under Article 227 of the Constitution of India to interfere. It is made clear that the order, now passed by this Court, would not disable the petitioner from availing such remedies, as are available to him in law, to take delivery of possession from Punjab National Bank or to ensure that his property is not encroached upon by the respondent-plaintiffs. The Court below shall decide any such application on its own merits without being influenced by any observations made in the order now passed by this Court.

The C.R.P. fails and is, accordingly, dismissed.

Miscellaneous Petitions pending, if any, shall also stand dismissed.

There shall be no order as to costs.

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**RAMESH RANGANATHAN, J**

18<sup>th</sup> March 2016.  
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**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

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**Date: 18.03.2016**

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