

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.4199 OF 2016

ORDER:

This revision petition, under Article 227 of the Constitution of India, is filed challenging the Order dated 24.06.2016 in I.A. No.146 of 2016 in O.S. No.366 of 2016, passed by the IV Junior Civil Judge, City Civil Court, Hyderabad, whereby the petition filed by the revision petitioners herein under Rule 10 of Order I of CPC was dismissed.

02. The revision petitioners herein filed petition I.A. No.146 of 2016 in O.S. No.366 of 2016 under Rule 10 of Order I of CPC read with Rule 28 of Andhra Pradesh Civil Rules of Practice contending that they are residents of different flats of Shankarji Nilayam Apartment, Red Hills, Hyderabad. The first respondent herein is the GPA holder of land owner and builder, who filed the suit and I.A. No.47 of 2016, obtained *ex parte* injunction on 18.02.2016 against the GHMC-second respondent herein. The case of the plaintiff, who is the first respondent herein, is that he constructed a building consisting of stilt + 7 floors basing on the lapsed sanctioned plan vide permit No.84/43 dated 08.02.2005 after cut off date 31.10.2015 by taking advantage of GHMC elections. Further he suppressed the material facts and filed the suit.

03. It is case of the revision petitioners that they are owners of site on Western side boundary of the suit schedule property, between their flats and suit schedule property, it is called Block-A, there is a large open space left with 10 feet set backs from both the

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sides of the open space, which is between Blocks-A and B, and their flats falls in Block-B. Due to unauthorized construction, the entire open space is swallowed, which is not part of Block-A, thereby their easementary rights are effecting. Hence, they sought permission to come on record as respondents 2 and 3 in the suit and in interlocutory application. The revision petitioners further submits the background of facts as to how the first respondent has taken up the construction of Blocks-A and B and the first respondent is carrying out a new construction in the open space which would damage the construction in future. Therefore, the petitioners made a complaint to the GHMC officials, but they have not taken any action, so they have filed writ petition vide W.P. No.9152 of 2016 before this Court. The municipal authorities, who is second respondent herein, had filed counter in the writ petition contending that injunction order is in force vide I.A. No.47 of 2016. The said writ petition was disposed on 21.03.2016 at the stage of admission. On account of the proposed construction, the flats of the petitioners are effected, and therefore, they are proper and necessary parties.

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

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

06. The revision petitioners filed a petition in the suit seeking permission to come on record as defendants 2 and 3 in the suit on the ground that the construction of the building is in deviation of approved plan and it would infringe their easementary right in the schedule property. Therefore, they are proper and necessary parties and the main contention of the revision petitioners before this Court is that if the construction is completed, their easementary right would be effected.

07. 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 ANOTHER¹** 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.

08. Undisputedly, plaintiff, who is the first respondent herein, started construction of the building and filed the suit for injunction simplicitor against the defendant-Municipal Corporation, who is the second respondent herein, challenging the unauthorized proposed demolition of the suit property without issuing any notice and if really the revision petitioners are interested in the property, nothing prevented him to file a suit.

¹ 2016(3) ALD 247

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Instead of filing such suit, the present petition is filed to get themselves impleaded as defendants 2 and 3 under Rule 10 (2) of Order I of CPC as proper and necessary party to the suit.

09. 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**². At paragraphs 13, 14 and 15 of the said Judgment, the Apex court discussed as to who is proper or necessary party.

10. 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”.

11. 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

² (2010) 7 SCC 417

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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 property party to the suit for specific performance."

12. In view of the principles laid down in the above Judgment, in a suit filed by the plaintiff, who is the first respondent herein, against the defendant-Municipal Corporation, who is the second respondent herein, challenging the unauthorized demolition, the question to be decided is, whether demolition of alleged unauthorized construction in deviation of the approved plan or not without notice be permitted as per law?

13. But, here the revision petitioners claimed easementary right in the property, upon which the construction is being raised. In such case, remedy open to the petitioners are only to pursue their remedies in separate suit, since they are neither proper nor necessary party to the suit for injunction simplicitor against the Municipal Corporation and its employees and the principle laid down by this Court in **S.M.M. JAHANGIR ALI KHAN**'s case has no application to present facts of the case.

14. Hence, I find that the revision petitioners are neither proper nor necessary parties to the suit and the trial court rightly come to a just conclusion declining to allow the revision petitioners herein to come on record as defendants 2 and 3 in the suit,

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exercising its discretion. Therefore, I find no ground warranting interference of this Court.

15. Accordingly, the revision petition is dismissed. No costs.

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

M. SATYANARAYANA MURTHY, J

Date: 23.09.2016
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