

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION Nos.4502 of 2016 & 5140 of 2016

COMMON ORDER:

These two revision petitions, under Article 227 of the Constitution of India, by the unsuccessful petitioner/third party, are directed against two separate orders, dated 01.06.2016, of the learned XXV Additional Chief Judge, City Civil Court, Hyderabad, passed in I.A.Nos.1069 of 2015 and 1070 of 2015 in O.S.No.118 of 2015, respectively filed under Order 1 Rule 10 and Section 151 of the Code of Civil Procedure, 1908, read with Rule 28 of the Civil Rules of Practice and Circular Orders requesting for impleadment of the petitioner/third party as 3rd respondent in the interlocutory application in I.A.No.580 of 2015 and as 3rd defendant in the said suit filed by the plaintiffs/respondents 1 & 2 herein.

2. I have heard the submissions of the learned counsel for the revision petitioner/third party/proposed 3rd defendant. I have perused the material record.

3. Though respondents 1 to 3 are served with notices, they have not entered appearance. The 4th respondent is stated to be not a necessary party. In fact, the learned counsel who appeared for respondents 3 & 4 herein, i.e., for the defendants 1 & 2 in the suit, stated 'No Objection' before the trial Court for passing appropriate orders in the above said interlocutory applications and for the impleadment of the petitioner/3rd party in the suit and interlocutory application pending in the suit. Thus, none of the respondents herein are resisting the revision petitions.

4. The parties in these revision petitions shall hereinafter be referred to as petitioner/third party, plaintiffs and defendants for convenience and clarity.

5. The facts, which are required to be stated as a prelude to this order, in brief, are as follows:

The plaintiffs 1 & 2 brought the suit against defendants 1 & 2, i.e., the Commissioner, Greater Hyderabad Municipal Corporation (for short, 'GHMC') and the Deputy Commissioner, GHMC, seeking the following reliefs:

- "a) Declaration, declaring the Plaintiffs as absolute owners and possessors of Suit Schedule Property**
- b) Consequently Perpetual Injunction restraining the Defendants their sub-ordinates, agents, any person or persons claiming through them from interfering with the Plaintiffs peaceful possession by way of demolition over the Suit Schedule Property otherwise due process of law.**
- c) Award costs of these proceedings and**
- d) Pass such other and further relief or reliefs as are deemed fit and proper in the circumstances of the case and in the interest of justice."**

The petitioner/third party sought her impleadment as 3rd defendant in the said suit and also as the 3rd respondent in one of the interlocutory applications filed by the plaintiffs in the said suit. The said applications were resisted by the plaintiffs by filing counters. On merits and *vide* orders impugned in these revision petitions, the trial Court dismissed both the applications of the petitioner/third party. Therefore, the petitioner/third party is before this Court.

6. Before proceeding further, it is necessary to state the pleadings of the parties.

7. The case of the plaintiffs is this: They are the absolute joint owners and possessors of the suit schedule property, i.e., property bearing Door Nos.8-3-222/12/A/1 to 8, admeasuring 600 square yards, in Survey No.119, corresponding to Old Survey No.38/1, situated at Yellareddyguda, Golkonda Mandal, Hyderabad. The first plaintiff and one C.Jagan Mohan Reddy acquired the said property under registered Sale Deed, dated 05.10.1992, executed by M.A. Kareem, who is the registered GPA holder of the owner of the property by name Parvathi Devi. Thereafter, the said C.Jagan Mohan Reddy alienated his half share in the property to the 2nd plaintiff under a notarized agreement of sale, dated 14.06.1996, by receiving the entire consideration and delivered possession of his half share to the 2nd plaintiff *vide* a letter executed on 14.06.1996. Thus, the plaintiffs are owners and possessors of the plaint schedule property. Their vendor Parvathi Devi submitted an application to the defendants 1 & 2 in March, 1988, for permission for construction of a new building in the said property after demolishing the existing structures thereon. However, the said request for permission was rejected by the defendants 1 & 2 by a proceeding, dated 22.04.1988. She then approached this Court and filed W.P.No.5970 of 1989 against the Municipal Corporation. On her death, her legal representatives requested time for approaching the municipal authorities for consideration of their case. However, by order, dated 12.12.1995, the municipal authorities rejected their request for permission. At that stage, the first plaintiff preferred W.A.No.1592 of 2000 and the said writ appeal was dismissed, on 22.03.2004. Thereafter the municipal authorities passed orders, on 16.10.2006. Thereafter, the first plaintiff along with others filed W.P.No.21899 of 2006 and the said writ petition was disposed of by an order, dated 07.10.2014, reserving liberty to the

petitioners therein to avail remedies available under law. Thereafter, further notices were issued by the municipal authorities in December, 2014, demanding the plaintiffs to remove the unauthorized structures over the suit schedule property. Thereafter, the plaintiffs again filed W.P.No.213 of 2015 before this Court. This Court, by order, dated 20.01.2015, refused to grant interim order, as the earlier W.P.No.21899 of 2006 was disposed of based on a submission made by the learned counsel for the petitioners therein and time of two (02) months was granted to avail remedies available under law and as the petitioners therein failed to seek remedies available under law and the Municipal Corporation issued impugned proceedings, dated 27.12.2014, for enforcing the order, dated 16.10.2006. The writ appeal in W.A.No.27 of 2015 was also dismissed by Division Bench of this Court by orders, dated 22.01.2015, however, with a direction to the municipal authorities to consider the explanation offered by the plaintiffs along with that of the others after affording an opportunity of personal hearing in the matter to them. The municipal authorities eventually afforded an opportunity of hearing and passed eviction orders *vide* proceedings, dated 10.03.2015. At that stage, the plaintiffs brought the suit, on 23.02.2015, stating that the men of the municipal authorities came to the suit schedule property and tried to dismantle the structures thereon.'

8. The defendants 1 & 2, i.e., Officers of the GHMC are resisting the suit *inter alia* contending that the constructions are unauthorized and illegal and that the plaintiffs, by way of various proceedings including the instant suit, are illegally trying to establish their right over the suit property, which is a park according to the approved layout, and that the municipal authorities have passed final orders in accordance with the procedure established by law for eviction of the plaintiffs from the suit

schedule property and for demolition of structures thereon and that the suit was brought even without issuing a statutory notice and without challenging the said final orders.

9. Be that as it may, the case of the petitioner/third party is that she purchased 302 square yards out of the suit schedule property of a total extent of 600 square yards from Jitender Pal Singh under a registered Sale Deed, dated 15.02.1989, and that excluding the property purchased by her, the remaining property is a municipal park as per approved layout and that the plaintiffs and their predecessors-in-interest encroached into the suit schedule property, part of which is a park, and made unauthorized constructions by taking law into their hands and leased out the same to tenants and that the plaintiffs suppressed the various facts including the earlier proceedings from time to time and brought the suit only against the municipal authorities without impleading the petitioner/third party and that the petitioner/third party is having right, title and interest over a part of the suit schedule property and, therefore, the petitioner/third party is a necessary and proper party and that without her presence as a party defendant, the suit cannot be effectively adjudicated and a quietus cannot be given to the dispute involved the suit.

10. In this backdrop of pleadings, which are undisputed, the learned counsel for the petitioner/third party would submit that in view of the fact that the petitioner/third party acquired right, title and interest over an extent of 302 square yards, which is a part of the suit schedule property, under a regular registered Sale Deed, dated 15.02.1989, and as the remaining property, as per layout and even according to the case of defendants 1 & 2, is a municipal park, the proposed third party/petitioner would be prejudiced and her rights would be adversely

effected, if the suit is disposed of without an opportunity of hearing to the petitioner/third party and that in that view of the matter, the petitioner/third party is a necessary and proper party to the suit. He also placed reliance on a decision of this Court in **Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and others**¹ stating *inter alia* that under similar circumstances and in a case of identical facts, this Court permitted impleadment of a third party and that in view of the facts and legal position obtaining, the petitioner/third party is entitled to be impleaded as 3rd defendant in the suit and 3rd respondent in the pending interlocutory application. He would also point out that the defendants 1 & 2 have already stated no objection for impleadment of this third party as a party defendant to the suit and that the trial Court dismissed the applications of the petitioner/third party only on the ground that the relief sought for is a discretionary relief and that no grounds, much less valid grounds are shown for exercising discretion in favour of the petitioner/third party. The learned counsel finally submits that the orders of the trial Court impugned in these revision petitions are erroneous and are liable to be set aside.

11. I have given detailed and thoughtful consideration to the facts and submissions. I have gone through the decision cited. While deciding applications of this nature for impleadment of a third party/petitioner, the trial Court is not supposed to go into the merits of the matter and the trial Court is only required to examine as to whether the petitioner/third party is having any semblance of title or interest in the property or a part thereof and the third party's presence is necessary for effective adjudication of the *lis*. Be it noted that the first plaintiff claims title to the property under a Sale Deed, dated 05.10.1992, and the 2nd plaintiff

¹ (1992) 2 Supreme Court Cases 524

claims title and possession of the property by virtue of a notarized agreement of sale, whereas the petitioner/proposed defendant claims title to an extent of 302 square yards out of the suit schedule property admeasuring 600 square yards by virtue of a registered Sale Deed, dated 15.02.1989, and the defendants 1 & 2/GHMC Officers are contending that the suit schedule property is a park area as per approved layout and that by virtue of proceedings that are being instituted by the plaintiffs one after the other and their vendor, the plaintiffs are trying to grab the park area of the layout and that, therefore, final orders for eviction of the plaintiffs from the suit schedule property and for demolition of the structures thereon were passed by the GHMC. One of the apprehensions of the petitioner/third party is that if she is not impleaded, the Officers of the GHMC may not diligently prosecute the defence and the ultimate sufferer would be the petitioner/third party in case the plaintiffs' suit is to be decreed for non-prosecution of the defence of the defendants 1 & 2 with diligence. The law is well settled that when a party claims right, title and interest in a part of the suit schedule property and his presence is necessary for effective adjudication of the *lis*, the said party is entitled for impleadment as a party defendant to the suit as well as in the interlocutory applications pending, if any, in the suit. Such a course would sub-serve the ends of justice and would eventually help the trial Court in giving a quietus to the *lis* once and for all. Though the plaintiff is *dominus litis* and he is entitled to choose a defendant against whom he wants the relief sought in the suit, the Supreme Court in **Ramesh Hirachand Kundanmal** (1 Supra), categorically laid down that the Courts are having discretion to implead a party, if the presence of such party is necessary for effective adjudication of the *lis* and if that party has *locus standi* and he is interested in the *lis*. In view of the undisputed facts and the legal position obtaining, this Court is of the considered view that the

orders impugned in these two revision petitions are unsustainable under facts and in law and that, therefore, the trial Court is not justified in dismissing the petitions of the petitioner/third party.

12. In the result, the C.R.P.Nos.4502 of 2016 & 5140 of 2016 are allowed and as a sequel, I.A.Nos.1069 of 2015 and 1070 of 2015 in O.S.No.118 of 2015 are allowed according permission for impleadment of the petitioner/third party as 3rd respondent in I.A.No.580 of 2015 and as 3rd defendant in O.S.No.118 of 2015, on the file of the XXV Additional Chief Judge Court, City Civil Court, Hyderabad.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, in these civil revision petitions shall stand closed.

JUSTICE M. SEETHARAMA MURTI

Date: 20th October, 2017

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THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI**CIVIL REVISION PETITION Nos.4502 of 2016 & 5140 of 2016**Date: 20th October, 2017

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