

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.201 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the Order, dated 22.11.2016, passed in I.A.No.266 of 2016 in O.S.No.1486 of 2014, by the VII Senior Civil Judge, City Civil Court, Hyderabad, whereby, the petition filed under Order I Rule 10 CPC to implead the petitioner herein as second defendant in O.S.No.1486 of 2014 was dismissed.

Initially, Syed Ahmed Pasha Quadri, Syed Mujeeb Quadri and Syed Najamuddin filed a suit against Syed Mohd. Naseeruddin Jeelani, for grant of injunction simplicitor/perpetual injunction restraining the defendant therein from interfering with their peaceful possession and enjoyment including dispossession of the plaintiffs over the suit schedule properties in sy.No.54, admeasuring Ac.1.05 guntas, Ac.1.33 guntas in Sy.No.55, Ac.2.15 guntas in Sy.No.56, totaling Ac.5.13 guntas situated at Bandlaguda Khalsa village and Mandal, Hyderabad District.

Subsequently, the Telangana State Wakf Board, represented by its Chief Executive Engineer, filed an application in the said suit before the trial Court under Order I Rule 10 CPC, contending that the schedule property

belongs to Wakf Board and, therefore, Wakf Board is proper and necessary party to the suit and the plaintiffs filed a forged Gazettee etc., before the trial Court and in the absence of Wakf Board, the matter cannot be decided effectively, accordingly, prayed to implead the Wakf Board as second defendant in the suit.

The respondents/plaintiffs filed counter denying the allegations made in the plaint and finally contended that they filed the suit for injunction simplicitor/perpetual injunction and unless the cause of action against any third party is pleaded, such third party, by any extent of imagination, will have no vested right to be impleaded in such suit and that the remedy sought by the plaintiffs is *in personam* and not *in rem* and prayed for dismissal of the petition.

Upon hearing both the counsel, the trial Court recorded a finding regarding genuineness of Gazette dated 04.06.2009 and variations among other documents regarding survey number etc., dismissed the petition.

Aggrieved by the said Order, the proposed party filed the present revision on various grounds, mainly on the ground that the jurisdiction of the Civil Court will be ousted when the property is notified as Wakf property and the Wakf Tribunal alone is competent to decide the disputes

relating to Wakf property, and that the trial Court did not consider the said objection and the impugned Order is silent about this contention. It is also contended that if the petitioner herein/proposed party is not allowed to come on record in the suit, the respondents may complete the construction, which would directly infringe or invade the rights of the proposed party and prayed to permit the Wakf Board to come on record as second defendant in the suit.

The respondents herein opposed the petition while supporting the Order passed by the trial Court in all respects.

The suit is filed only for bare injunction/injunction simplicitor and the relief claimed by the plaintiffs therein is against the sole defendant, who allegedly is making an attempt to infringe or invade the legal rights of the plaintiffs. The petitioner herein/proposed party is not a *dominus litus* and not the master of respondents/plaintiffs case and it is not for him to decide as to who is the proper and necessary party and against whom the relief of injunction simplicitor can be sought. Since the petitioner herein/proposed party is not interfering with the possession of the plaintiffs, the plaintiffs were not willing to claim any relief against it and, therefore, not made it as a party/defendant to the suit, but the petitioner herein/proposed

party itself wanted to come on record as defendant No.2 on the ground that the subject properties are Wakf properties.

The scope of suit for injunction simplicitor is limited and the Court is required to record its findings as to who is in lawful possession and enjoyment of the suit schedule property as on the date of filing of the suit and if there any attempt to infringe or invade the legal rights of the plaintiffs/respondents, but the title of the parties cannot be decided, except incidentally to decide the lawful possession and enjoyment of the parties. In the instant case, the findings recorded by the trial Court regarding genuineness of the Gazette etc., are irrelevant for the purpose of deciding an application filed under Order I Rule 10 CPC. If the petitioner has got any direct interest over the subject properties and if the suit is filed seeking substantive relief, the petitioner herein can be impleaded as a party to the suit. In a suit for injunction simplicitor, the petitioner herein/proposed party cannot be allowed to come on record as defendant to resist the claim of the plaintiffs on the ground that it is not a exclusive suit between the plaintiffs and defendant. Moreover, the remedy open to the petitioner herein/proposed party is elsewhere, but his right cannot be decided in the present suit for injunction simplicitor. Hence, the observations or findings recorded in para No.8 of the Order of the trial Court are set aside while

dismissing the petition, confirming the Order passed by the trial Court to the extent of negating the relief under Order 1 Rule 10 (2) CPC. In view of the above discussion, I find that this Civil Revision Petition lacks merit and is liable to be dismissed.

Accordingly, this Civil Revision Petition is dismissed, however, giving liberty to the petitioner to approach appropriate forum for redressal of its grievances, if any. It is made clear that the observations made in this Order shall have no bearing on any proceedings, subsequent to disposal of this Petition.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand dismissed.



M. SATYANARAYANA MURTHY, J

Date: 27-06-2017.
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Dt. 27-06-2017

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