

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.4102, 4166, 5260 and 5289 of 2016

COMMON ORDER:

These four Civil Revision Petitions came for common hearing and disposal from the common question of law involved, but for a little difference in facts as in two sets. Heard counsel for petitioners in all the four matters and counsel for respondents in two of the four matters at length and taken as heard the respondents in other two matters from the fact that despite service they failed to appear. Perused the material on record and the propositions placed reliance by both sides.

2. Coming to C.R.P. Nos.4102 and 4166 of 2016, these are outcome of the orders in I.A. No.350 of 2016 in O.S. No.62 of 2012 and I.A. No.351 of 2016 in O.S. No.61 of 2012, respectively, on the file of the I Additional Chief Judge, City Civil Court, Secunderabad (for short, 'the trial Court') against the dismissal of the implead petitions.

3(a). Comint to factual background of C.R.P. No.4102 of 2016, O.S. No.62 of 2012 (old O.S. No.21 of 2008) is maintained by sole plaintiff-Abdul Munshad Baig against the sole defendant- Abdul Khadeer Baig, which is a suit for bare injunction from evicting the plaintiff from the plaint schedule property and also from disrupting the electricity supply to the plaintiff in the plaint schedule property. The plaint schedule consists of 'A'

and 'B', 'A' schedule consists of the property admeasuring 1600 square yards in the ground floor of the premises bearing Municipal No.1-7-68, situated at S.D.Road, Secunderabad; and 'B' schedule consists of property admeasuring 6256 square feet in the second floor of the same premises and within the boundaries described including northern 20 feet width road. The averments in support of the plaint are that the three floors building with the door number supra, belongs to the defendant, the plaintiff is in occupation of the ground floor, where he is running his factory known as "Protective Packaging Systems" since 1985, as described in the 'A' schedule of the plaint and the plaintiff also in occupation of the second floor, where he is residing since 1985, which is described as 'B' schedule in the plaint and the plaintiff's mother used to stay there with the plaintiff till she breathed last in May, 2006. The defendant is having his residence at Road No.3, Banjara Hills, since 1982 with business known as "A.K. Packaging Co". The plaintiff and defendant got two more brothers, namely, Abdul Zia Baig and Abdul Arif Baig and they purchased large extent of property at Banjara Hills with Municipal No.8-2-350 and 350A, admeasuring 8628 square yards, the defendant utilized his land holding in the said property having constructed complex known as "A.K. Enclave" and sold away the apartments so constructed, but for left a little extent with the defendant, he commenced the construction of the Phase-II and constructed another apartment

complex by encroaching the land of his brothers, namely, Abdul Arif Baig and Abdul Zia Baig supra and they filed suits against the defendant and also contempt case in C.C. No.1450 of 2001 in this Court. The defendant already constructed two floors over the encroached land of the other two brothers supra and the plaintiff then was persuaded by the defendant to relinquish his land of 1427 square yards in Banjara Hills property supra to Abdul Arif Baig and Abdul Zia Baig for consideration to enable Abdul Khadeer Baig and the defendant to retain the land of his brothers Abdul Arif Baig and Abdul Zia Baig also under his encroachment having committed to pay Rs.70 lakhs to the plaintiff and the other brother-Abdul Zia Baig had committed to pay Rs.40 lakhs and there was a memorandum of understanding among the plaintiff, defendant and his two brothers on 07.09.2002 with these facts and the plaintiff will be allowed to continue to remain in occupation and enjoyment of the plaint 'A' and 'B' schedule property till payment by the defendant of the said amount of Rs.70 lakhs to the plaintiff rent free and the second memorandum of understanding dated 30.11.2003 also contain the said admission by the defendant, which gives right to the plaintiff to continue in the plaint 'A' and 'B' schedule property without right of eviction by the defendant till payment and the defendant is not entitled to evict except to comply the same and only through process of law. The plaintiff is prepared to execute conveyance deed in respect of Banjara Hills property

as agreed and instead of conveyance, it was executed as gift deed, though sale consideration was involved and as per which, the defendant has to pay Rs.70 lakhs and the defendant did not fulfill the promise by payment of the amount to the plaintiff and the said Arif Baig sold away the property, which ostensibly was gifted to him, to one Indus Palm Hotels Private Limited on 06.03.2006, despite the objections made by the plaintiff. The plaintiff filed O.S. No.61 of 2012 (old O.S. No.73 of 2007) for recovery of possession of the portion of the property at Banjara Hills to an extent of 627 square yards covered by the memorandum of understandings supra, but for the defendant failed to pay the amount of Rs.70 lakhs within time where the plaintiff has pleaded that the gift is null and void and there was *status quo* order on 23.02.2007. The plaintiff also filed O.S. No.4 of 2007 against another brother-Mohd. Zia Baig and Indus Palm Hotel Private Limited for recovery of 800 square yards at Banjara Hills, where also interim orders passed for the non-fulfillment of the conditions of the memorandum of understandings supra by the defendant, since the plaintiff is entitled to possession of 627 square yards at Banjara Hills and the plaintiff is entitled to continue in possession of plaint 'A' and 'B' schedule properties till recovery of the amount. The defendant is threatening the plaintiff that he would cut off the electricity supply and trying to evict him from the suit schedule 'A' and 'B' properties, despite the plaintiff is paying the

electricity bills for the suit property since 1985, to forcibly vacate, if possible and brought some prospective on 20.03.2007 showing the entire building consisting of plaint 'A' and 'B' schedules also part of it and the plaintiff apprehends that the defendant may carry out such threats and necked out and hence, entitled to the suit relief.

3(b). Of which, I.A. No.351 of 2016 was filed by Abdul Subhan Baig, the unsuccessful third party implead petitioner to come on record as defendant No.2, saying that the sole defendant-Abdul Khadeer Baig (R.2) is his father and there is other connected suit O.S No.61 of 2012 (old O.S No.73 of 2007) that was, as per transfer orders in Tr.C.M.P. No.407 of 2011, transferred and renumbered as O.S No.62 of 2012 (present one) from original number is O.S No.21 of 2008, leave about O.S No.63 of 2012 and O.S No.64 of 2012, for the reliefs of declaration, or recovery of possession or injunction, as the case may be, besides Arbitration O.P. No.247 of 2012 that his father colluded with other respondents and in plaint 'A' schedule property in O.S No.62 of 2012, he got equal shares with his father and brother, who are jointly enjoying the same, hence, he may be impleaded as a co-defendant to the suit. His father gifted plaint 'A' schedule property in O.S No.62 of 2012 to him and his brother in the presence of his mother, late Smt. Zubeda Begum and other elders of the family including Abdul Munshad

Baig and the donee accepted the gift and there is delivery of possession and the plaintiff filed O.S No.62 of 2012 for perpetual injunction against the sole defendant and he wanted to be impleaded as defendant No.2 being son of defendant No.1. The same was opposed not only by respondent No.2-sole defendant of the suit in saying similar pleas raised in I.A. No.1741 of 2015 to implead as defendant in other suit and the same was ended in dismissal on 11.06.2015 and there is no necessity for impleadment in O.S No.62 of 2012 and it is, in fact, a collusion between father and son and there is no need of impleadment and the claim of the proposed party is a co-owner in joint possession is untrue. The trial Court observed that even in the other application I.A. No.1741 of 2015 ended in dismissal by order dated 11.06.2015, the petitioner's father as respondent No.2 did not plead about any oral Hiba dated 19.11.1979 set up by the petitioner to come on record and there is no iota of evidence to disclose the same for any of the portion of the plaint schedule property, much less to show any exclusive possession as owner or co-owner and there is no reference to the present petitioner in any of the memorandum of understandings had there been any truth and the suit dispute to decide the so-called oral Hiba set up is no way relevant much less to come on record with that claim and if at all, is to make a separate suit claim against his father and the trial Court therefrom observed that he is neither necessary nor proper

party and there is no basis to the claim of possession from the alleged Hiba and dismissing the same which is the subject matter of the revisions.

3(c). In the revision, respondent No.2-father of the implead petitioner filed counter claiming that the petitioner with no avocation is living in his in-law's Siddiqui's house and he used to obtain his signatures on various papers on one pretext or the other to look after the proceedings without explaining and from the faith and confidence reposed on him and he might have obtained any signature and denied about the oral Hiba for part of the suit property to the petitioner and his other brother in the presence of his wife or late Abdul Munshad Baig or any other elders and there is no delivery of possession or acceptance much less enjoyment of the property and defendant No.1 alone is absolute owner and his sons or daughters have no right over the same in his lifetime. There is a direction for early disposal of O.S. No.61 of 2012 on 11.02.2011 that was not given effect and the memorandum of understanding executed or voluntarily by him or his sons and daughter and the petitioner has no manner of right to come on record and neither necessary nor proper party to the suits.

4(a). Coming to factual background of C.R.P. No.4166 of 2016, the suit O.S. No.61 of 2012 (old O.S. No.73 of 2007) filed by Abdul Munshad Baig, against three defendants, i.e., Abdul

Khadeer Baig and also defendant No.1 in O.S. No.62 of 2012, his brother Abdul Arif Baig and Indus Palm Hotels and Resorts Limited as three defendants and the suit relief is in respect of the property consisting of 627 square yards out of 1427 square yards of house bearing Nos.MCH 8-2-350, 350A/ 1B out of club Nos.8-2-350, 350-A/ 1A and 8-2-350, 350-A/ 1B of Road No.3, Banjara Hills (Shaikpet village within the boundaries) for relief of recovery of possession and alternatively for recovery of an amount towards its value of Rs.1,17,88,250/- against the defendants with the averments covered and referred supra and it is pending the suit, the self-same petitioner Abdul Subhan Baig maintained I.A. No.350 of 2016 with the averments self-same referred supra and the counters of the plaintiff and defendant No.1 is almost self-same and the trial Court dismissed the petition also by referring to earlier petition and order in I.A. No.1741 of 2015 dated 11.06.2015.

4(b). So far as these two petitions supra, before coming to the other two petitions concerned, which are under contest, leave about there is earlier dismissal order in I.A. No.1741 of 2015 in O.S. No.61 of 2012 (old O.S. No.73 of 2007), the claim of the petitioner no other than the son of the sole defendant in O.S. No.62 of 2012 and defendant No.1 among the three defendants in O.S. No.61 of 2012 is the father of defendant No.1 allegedly given an oral gift by Hiba way back in the year 1979.

There is no iota of evidence filed by him of existence of so-called oral gift and it is acting upon, much less by proof, atleast by affidavit or any person as to whom in whose presence they have given declaration of oral gift and giving and acceptance pursuant thereto. The pre-requisites once lacking apart from even there is any existence, there is nothing to permit to come on record as neither necessary nor proper party to the suit lis, but for as observed by the trial Court, his remedy is to file any independent suit or separate suit against his father by showing the other defendants. From the scope of the suit lis covered by O.S. No.61 of 2012 are very limited. Hence, against the impugned order from the hearing of both sides at length including from the grounds of revision vis-à-vis the other pleadings and the conclusion arrived by the trial Court in dismissing the application, there is nothing to interfere.

5. Coming to the other two revisions, C.R.P. Nos.5260 and 5289 of 2016 maintained by M/s. Oak Construction Company, a Partnership Firm, represented by Managing Partner, and Omair Abdul Khader, to come on record as proposed defendant Nos.2 and 3 in O.S. No.21 of 2015 maintained by the plaintiffs, by name, Mohammed Abdul Wadood, Mohammed Abdul Khaliq and Mohammed Abdul Wasi, sons of late M.A.Rahman and the Greater Hyderabad Municipal Corporation, represented by its Commissioner, Hyderabad. The two

applications covered by the impugned dismissal common orders dated 24.06.2016 passed in I.A. Nos.71 and 72 of 2016 in the pending petition I.A. No.20 of 2015 in the suit.

6(a). Coming to the facts, the plaint averments of O.S No.21 of 2015 vis-à-vis the averments in the injunction application in I.A. No.20 of 2015 show that the proposed petitioners to come on record as defendants paid Rs.14 lakhs by pay order dated 31.03.2007 bearing No.339411 drawn on Corporation Bank, Himayathnagar towards dues to M/s. Mannan and Company with State Bank of Hyderabad, Malakpet Branch and getting the original title deeds, released for the property No.1-4-483, Musheerabad, Hyderabad, admeasuring 590 square yards that were agreed would remain deposited with the petitioner by creating first charge in their favour over the property for their developing pursuant to the Development Agreement-cum-GPA No.1319-2007 dated 03.04.2007 registered at Chikkadapally with Developmental Agreement-cum-Irrevocable GPA with the owners of the property and subsequently second petitioner met with an accident and could not continue with execution of the project and large sums have been spent on the project by then even by petitioner No.1-firm and the land owners with petitioner No.1 as consenting party decided to enter into agreement with new builder through their GPA to return back the deposit amount of Rs.28 lakhs and

miscellaneous charges of Rs.12 lakhs total Rs.40 lakhs to petitioner No.1 within 15 months from 22.06.2009 pursuant and in lieu of Rs.40 lakhs payable by 22.09.2010, the GPAs agreed to allot and hand over 1333 square feet of build up area in the first floor eastern side as a complete flat as per the sanctioned building of the ground plus three floors and in the supplemental agreement supra dated 22.06.2009, the amount that was agreed to repay by 22.09.2010, if there was a delay, for that, to pay additionally as penalty of a sum between Rs.40,000/- and Rs.45,000/- till the total principal amount of Rs.40 lakhs being paid and the builder failed to complete project within the time and was apparently given an extension of one year starting from 30.01.2012, subsequently, the GPAs of the land owners and the land owners surreptitiously entered into a registered partition deed on 28.08.2013 and mutually divided all the flats among them and clandestinely purported to sell two flats bearing No.204 by Abdul Razaak and Nayeem Unnisa and the flat bearing No.201 by Abdul Mannan and Raffat Unnisa respectively to third parties and leased out five flats to third parties including the first floor and because proposed petitioners' rights are involved and the suit proceedings are going to be taken up behind their back and infringing their rights, they are necessary parties and they have also made applications to GHMC to regularize the building in spite of the illegalities, suppressing the fact that this property is the subject of legal proceedings and the proposed

parties having charge over the entire property, thereby no part of it could be sold unless the flat of 1333 square feet in first floor being given first to the proposed parties and the value of the same would come to Rs.64,80,000/- and the single flat would now cost about Rs.75 lakhs at present rates and getting signed agreement concerning to develop the property with another builder, petitioner No.2 among the two petitioners, seeking to implead, had an accident and he was victim of fraud played by them by slipped between pages additional sheets without knowledge while taking signatures, which he came to know later, on seeing about two memorandum of understandings, which are nothing but brought into existence and the plaintiffs are not entitled to the reliefs in derogation to the previous vested rights of him where he got charge and entitled to get from the owner of the apartment of 1333 square feet on the first floor and entitled to get Rs.40,000/- each month as penalty for the delay delivery, thereby their impleading is necessary.

6(b). There were no counters filed by the respondents in the implead petitions. It was after hearing, the trial Court in dismissal of the two petitions, observed that this is a suit for bare injunction filed by sole-plaintiff against the sole-defendant and the issues involved when can be effectively decided in the absence of the proposed parties and that too, they will not get

any positive relief by coming on record, their presence is no way required and they are neither necessary nor proper parties thereby.

6(c). The contentions in the two revisions impugning the same are that the trial Court went wrong in dismissing the petitions instead of allowing saying that amounts paid due for which the flat was agreed to be given and without delivery, there are proceedings effecting their rights thereby they have to be impleaded.

7. Now coming to the expressions placed reliance;

7(a). In *Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay*¹, in scope of Order 1 Rule 10 C.P.C., the Apex Court observed that the plaintiff being dominus litis, cannot be forced to join as party and no doubt the party can be joined as the defendant, even the plaintiff does not think of having any cause of action from the power conferred on the Court to add parties, however the party must come on record either as necessary or as proper party to implead at any stage of the suit proceedings, whereas, his presence is necessary for the effective adjudication of the lis completely in all respects and he must show that there is direct interest in the said matter of the suit to come on record. The factual matrix of the decision has no application to the case on hand.

¹ 1992(2) SCC 524

7(b). Coming to the expression in Hiranand v. T.M.Kambati², it is in relation to unauthorized constructions, the neighbours aggrieved by the unauthorized construction can seek impleadment in the suit filed against the Municipal Corporation of not to demolish the unauthorized construction, when their rights are effected and this decision also no way applicable to the present facts.

7(c). Coming to the other expression in Neelam Ajit v. V.Suresh Reddy³, this is also a suit for bare injunction against the Municipality not to demolish the building in question and obtained temporary injunction by the owner of the building, the petitioner-third party no other than the neighbour to the schedule property, wanted to be impleaded showing the construction is unauthorized by violation and with deviations to the plan effecting their rights from which, there is a direct interest. Here, this decision also no way applicable to the present facts.

7(d). Coming to the other expression of the Madras High Court in A.N.Srinivasan v. C.N.Sivakolundu Chettiar and others⁴, this is also in relation to the plaintiff claiming as tenants under defendant and, in fact, the original owners are different and the plaintiff is cultivating tenant under original

² 1996(4) ALD 919 = 1997(1) ALT 355

³ 2005(5) ALT 471

⁴ 2006(2) CTC 190

tenant defendant and not under the original land owners, when the defendant trying to dispossess the plaintiff, the plaintiff filed suit against the original tenant defendant and the trial Court observed for effective and complete adjudication and to settle all questions involved in the suit to permit them as necessary parties to come on record as co-defendants and the matter when went before the High Court in revision, it was observed that the trial Court was right in permitting as proper parties to the suit.

7(e). It referred for that conclusion Ramesh Hirachand Kundanmal's case (supra 1) and another earlier Apex Court's expression in Razia Begum v. Anwar⁵, where the Apex Court held that the impleadment of any person, either as necessary or proper party, is a question of judicial discretion and at any stage, to add a party, he must have direct interest distinguished from a commercial interest.

7(f). Here, having interest alone is not the criteria and the nature and scope of the lis originally involved and by impleadment the area to be chosen to extend or within the scope is only the main criteria even to decide, either as necessary or atleast proper party, since the proper party is a person, whose presence must help the Court to completely adjudicate the lis involved that was raised by the plaintiff with

⁵ AIR 1958 SC 886

defendant by non-impleadment of anybody from their impleadment as also held in paragraph No.28 of the expression of the Apex Court in J.J.Lal Private Limited and others v. M.R.Murali and another⁶. From this, coming to the scope of lis, at the cost of repetition, when without their presence the suit lis can be decided effectively, they are not to be allowed to bring forth their new case to set up which is beyond the scope of the respective three cases covered claims and that too when they are otherwise entitled if at all to get any reliefs by filing independent suits to make a claim in which the subject matter and the parties herein also can be included by impleadment as co-defendants for effective adjudication if they so choice.

7(g). Apart from it, as held by the Constitutional Bench in Arjun Singh v. Mohindra Kumar and others⁷ principle of res judicata is applicable to decisions on particular issue of fact even if fresh facts were also placed before the Court, the bar would continue to operate and preclude a fresh investigation of the issues. Res judicata is held applicable even to interlocutory orders, where there is a remedy of appeal with no appeal maintained and when that attained finality.

7(h). In Y.B.Patil and others v. Y.L.Patil⁸, the Three-Judge Bench of the Apex Court also observed that the principles of res judicata can be invoked not only in the separate

⁶ AIR 2002 SC 1061

⁷ AIR 1964 SC 993(1)

⁸ AIR 1977 SC 392

proceedings, but also in subsequent stages on same proceedings, once the order is made final to bind even at subsequent stage of the proceedings on the parties who went unsuccessful.

7(i). In *Prahlad Singh v. Col. Sukhdev Singh*⁹, it was held that principles of res judicata are applicable between two stages of same proceedings of interlocutory stage even in the absence of filing appeal against the finding where appeal is statutorily provided, as held in *Satyadhyan Ghosal v. Deorajin Debi*¹⁰, that was also referred in *Arjun Singh's case* (supra 6) by the Constitutional Bench.

8. The petitioners, from the above, in fact, can maintain a suit to enforce the Memorandum of Understanding-cum-Development Agreement-cum-Sale Agreement and the Supplemental Agreement with modification and cancelling the earlier on some of the terms and conditions by undertaking for the amount paid by them to give at ground floor, a flat of 1333 square feet building area for specific performance by impleading the parties to the suit, if at all to get the relief. But for that, by their choosing to come on record in the suit for bare injunction by their impleadment, they cannot establish their claim, much less interdict the suit proceedings which is within the limited scope, nor the present suit proceedings in any will prejudice the rights of the third parties to enforce their rights by independent

⁹ (1987) 1 SCC 727

¹⁰ (1960) 3 SCR 590

proceedings which is the only effective remedy. Thereby as rightly held by the trial Court, they are neither necessary nor proper parties to the suit. The trial Court thus, rightly dismissed the petitions for impleadment.

9. Having regard to the above, all the four Civil Revision Petitions are liable to be dismissed for nothing to interfere with the impugned orders of the trial Court, but for remedy of the petitioners, if any, is to file independent claims by separate suit proceedings including against the parties to the lis covered by the four revisions which is left open.

10. Accordingly and in the result, all the four Civil Revision Petitions are dismissed. There shall be no order as to costs.

11. Miscellaneous petitions pending, if any, in these revisions, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

24.01.2017
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