

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.5631 OF 2012

ORDER:

I.A.No.294 of 2012 in O.S.No.851 of 2009 filed by the petitioners-proposed defendants, invoking Order I Rule 10 CPC was rejected by an Order dated 24.07.2012 passed by the learned Principal Junior Civil Judge at Kurnool. Challenging the same, the present Civil Revision Petition is filed.

2) It is the case of the plaintiffs-respondents 1 to 12 that the land in an extent of Ac.3-00 was gifted by their ancestors in favour of the Gosamrakshana Sangham, proposed to be started at K.Nagalapuram village, and accordingly, they executed a Gift Deed in favour of the said Sangham on 04.11.1938, with a condition to establish a Gosala, Nature Cure Hospital and Maternity Hospital within five years and if the said Sangham fails to establish the public utility institutions within the said time or if the said land is used for any other purposes, the land will revert to the donors or their successors-in-title. The plaintiffs being the successors-in-title and as there is a failure on the part of the Gosamrakshana Sangham to implement the conditions of the gift deed in letter and spirit, the plaintiffs are entitled for a declaration that they are entitled to resume the land gifted vide Gift Deed dated 04.11.1938 executed by their ancestors. Hence, the plaintiffs filed O.S.No.851 of 2009.

3) The brief facts as set out in the affidavit filed in support of this Civil Revision Petition are that certain extent of land in Sy.No.52 of K.Nagalapuram Village is the Government Poramboke land, as recorded in RSR. After sub-division of the said Sy.No.52, an extent of Ac.2-49 cents in sy.No.52/1 was given to Irrigation Department and extent of Ac.0-48 cents in Sy.No.52/2 was given to Gosala and an

extent of Ac.3-03 cents in Sy.No.52/3 was given to different persons under patta and that the Government is in possession of land in Sy.No.52/1. Further, an extent of Ac.1-74 cents of land in sy.No.52/1A was delivered to Endowments Department, as per the orders of the District Collector, Kurnool, dated 11.01.2011 for construction of choultries to cater the needs of the devotees of Sri Sunkula Parameswari Temple at K.Nagalapuram Village. By changing the revenue records, plaintiffs 1 to 12 are falsely claiming right over the plaint schedule property over an extent of Ac.3-00 cents and their claim is unsuitable. As the land is in possession of Government and the 3rd petitioner they are necessary and proper parties to contest the suit filed by plaintiffs 1 to 12, who were respondents 1 to 12 in the present CRP. It may be noted that originally, the suit is filed for declaration of the right of the plaintiffs for resumption of plaint schedule land on account of non-performance of the conditions envisaged in the Registered Gift Deed dated 04.11.1938.

4) Learned Government Pleader for Arbitration strenuously contends by reiterating the contents in the affidavit filed in support of the CRP and submits that the learned Principal Junior Civil Judge, Kurnool failed to appreciate the true purport of Order I Rule 10 of CPC and failed to take into consideration the fact that the application made by the petitioners is in public interest and to protect the public property from being getting into the hands of the plaintiffs, who had made a false claim to knock away the government land without any manner of right. The learned Government Pleader also further urges that though the Government has been impleaded as a defendant, as can be seen from the written statement filed by the respective defendants, it is evident that they have not taken proper care to protect their interests and in those circumstances, it has become

necessary to implead them as defendants to protect the public property.

5) Learned counsel for the respondents, Sri Prabhala Rajasekhar, submits that under Order I Rule 10 of CPC, the petitioners-proposed defendants are not necessary or proper parties and the contention that the government property is sought to be knocked away by the plaintiffs is false. The learned counsel also further submits that as a matter of fact, the interests of the Government are adequately protected as the State of Andhra Pradesh represented by the Collector, who is the proper authority in law to represent the government, is already a party-respondent. Even if the petitioners have any semblance of right in suit schedule property, it is for them to assert their rights through defendant Nos.1 and 2 and they cannot, by themselves, seek to implead in the suit, as they are neither necessary nor proper parties. He would also draw the attention of the Court specifically to Sections 79 and 80 of CPC and further places reliance on the judgments of the Supreme Court in **Chief Conservator of Forests Government of A.P. v Collector and Others¹** and **Mumbai International Airport Pvt Ltd., v. Regency Convention Centre and Hotels Pvt. Ltd., and Ors.,²**

6) In the judgment referred by the learned counsel for the respondents in **Mumbai International Airport case (2 supra)** quoting its earlier judgment in **Kasturi v Iyyamperumal³**, the Supreme Court observed as follows:

“The position that necessary parties and proper parties can alone seek to be impleaded as parties to a suit for specific performance and that necessary parties are those persons in whose absence no decree can be passed by the Court or

¹ (2003) 3 Supreme Court Cases 472

² AIR 2010 Supreme Court 3109

³ AIR 2005 SC 2813

those persons against whom there is a right to some relief in respect of the controversy involved in the proceedings and that the proper parties are those whose presence before the Court would be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person. Referring to suits for specific performance, this Court held that the following persons are to be considered as necessary parties: (i) the parties to the contract which is sought to be enforced or their legal representatives; (ii) a transferee of the property which is the subject-matter of the contract. This Court also explained that a person who has a direct interest in the subject-matter of the suit for specific performance of an agreement of sale may be impleaded as a proper party, on his application under Order 1, Rule 10 of CPC. This Court concluded that a purchaser of the suit property subsequent to the suit agreement would be a necessary party as he would be affected if he had purchased it with or without notice of the contract, but a person who claims a title adverse to that of the defendant-vendor will not be a necessary party.”

7) Having considered the respective submissions and in the facts of the present case, there being no dispute that the claim of the petitioners is traced to the right and title of the property to the Government, which is impleaded as defendant No.1, and defendant No.1 being the proper and necessary party, apart from the Endowments Department represented by its Commissioner and other officers, the order of the Court below in dismissing the application of the petitioners cannot be found to be erroneous.

8) Likewise, in **Chief Conservator of Forests case (1 supra)**, relied on by the learned counsel for the respondents, the Supreme Court held as under:

“13. The question that needs to be addressed is, whether the Chief Conservator of Forests as the appellant-petitioner in the writ petition/appeal is a mere mis-description for the State of Andhra Pradesh or whether it is a case of non-

joinder of the State of Andhra Pradesh – a necessary party. In a *lis* dealing with the property of a State, there can be no dispute that the State is the necessary party and should be impleaded as provided in Article 300 of the Constitution and Section 79 CPC viz., in the name of the State / Union of India, as the case may be, lest the suit will be bad for non-joinder of the necessary party. Every post in the hierarchy of the posts in the government set-up, from the lowest to the highest, is not recognised as a juristic person nor can the State be treated as represented when a suit/proceeding is in the name of such offices/posts or the officers holding such posts, therefore, in the absence of the State in the array of parties, the cause will be defeated for non-joinder of a necessary party to the *lis*, in any Court or Tribunal. We make it clear that this principle does not apply to a case where an official of the Government acts as a statutory authority and sues or pursues further proceeding in its name because in that event, it will not be a suit or proceeding for or on behalf of a State / Union of India but by the statutory authority as such.

9) It may be noted that while Section 79 of CPC mandated that in relation to the affairs of the State, the State is to be sued by the name, Section 80 CPC mandates, prior to institution of the suit, a notice is required to be given to the State, represented either by its Secretary or by Collector. In the present case on hand, there is no dispute that the suit is filed in 2009 and the Government was represented by the Collector. A conjoint reading of the conditions imposed in Sections 79 and 80 of CPC, *prima facie*, stands satisfied, particularly in relation to the State being represented by the Collector. As the prime object of the petitioners is only to protect the property of the Government and the interest of the Government being represented by the proper and necessary parties, through Collector, the presence of the petitioners cannot be said to be either necessary or proper. It may be clarified that this Court is not expressing any opinion that their presence is

not necessary or they are debarred from producing necessary evidence before the Court to support their claim that the property in fact belongs to the Government and the plaintiffs have no semblances of right for a declaration as sought.

10) In the facts of the present case, this Court is also constrained to observe that the 1st respondent, represented by the Collector, does not appear to have bestowed its attention in protecting the interests of the Government, as the 1st defendant had merely sought to adopt the written statement filed by the 5th defendant, who is only an Executive Officer of the Gosala, which even as per the petitioners, was a non-statutory. Considering the fact that the property, admittedly, has already been endowed in favour of the Gosala, there is a duty cast on the defendants to protect their interest by properly contesting the suit.

11) Subject to the above observations, the Civil Revision Petition is dismissed. There shall be no order as to costs.

12) Consequently, Miscellaneous Petitions pending, if any, shall also stand dismissed.

CHALLA KODANDA RAM, J

Dated:10.11.2017.

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