

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.4608 of 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful petitioner-plaintiff is directed against the order, dated 28.07.2016, of the learned VII Additional District Judge, Madanapalle of Chittoor District, passed in IA.No.107 of 2014 in OS.No.21 of 2009 filed under Order I Rule 10 of the Code of Civil Procedure, 1908, ['the Code', for short] read with Rule 28 of the Civil Rules of Practice requesting to permit the plaintiff to bring on record the respondents 2 & 3/3rd parties as party defendants 2 & 3 in the suit and carry out the consequential amendments in the plaint.

2. I have heard the submissions of Sri T.S Anand, learned counsel appearing for the revision petitioner-plaintiff, of Sri P. Jagadish Chandra Prasad, learned counsel for the 1st respondent/defendant, and of Sri N. Pramod, learned counsel for the respondents 2 & 3/proposed defendants. I have perused the material record.

3. The introductory facts, in brief, are as follows: 'The plaintiff brought the suit against the sole defendant for partition of the plaint schedule properties into two equal shares and allotment of one separated share to the plaintiff after division of the plaint schedule property by metes and bounds after taking into consideration the good and bad qualities. The sole defendant is resisting the suit. In the pending suit, the plaintiff filed the afore-stated IA for permission to implead the proposed parties as defendants 2 & 3 and consequentially amend the plaint. That application was not resisted by the sole defendant. However, the proposed defendants 2 & 3 resisted the same.

On merits and by the orders impugned in this revision, the trial Court dismissed the petition of the plaintiff. Hence, the plaintiff is before this Court.'

4. The case of the plaintiff in support of the afore-stated request, in brief, is this: 'The plaintiff filed the suit for partition of the plaint schedule properties. The GPA holder of the plaintiff who filed the affidavit in support of the petition is conversant with the facts of the case as the plaintiff is living with him and his family since the date of the death of his mother. The GPA holder of the plaintiff came to know on enquiry that the sole defendant alienated a portion of the plaint schedule property to the proposed defendants 2 & 3. On knowing the said information, he applied for registration extracts of the sale deeds and obtained copies of the same, on 09.06.2014. The GPA holder of the plaintiff and the plaintiff could not know about the alienations made by the sole defendant, as they are residents of Nellore. Hence, the plaintiff could not implead the proposed defendants 2 & 3 as parties to the suit. The proposed defendants are necessary parties to the suit. The plaintiff has not derived any benefit from the sale transaction entered into between the sole defendant on one hand and the proposed parties on the other. If the proposed parties are not permitted to be impleaded as defendants 2 & 3, the purpose of filing the suit would be defeated and the decree that may ultimately be granted in favour of the plaintiff would be infructuous and inexecutable. Therefore, it is necessary to implead the purchasers of part of the suit schedule property as defendants 2 & 3. If those proposed parties are not permitted to be impleaded as defendants 2 & 3 and the plaint is not permitted to be amended, the plaintiff suffers serious and irreparable loss.'

5. As already noted, the sole defendant reported no counter and has not resisted the application of the plaintiff.

6. The case of the proposed defendants 2 & 3, in brief, is this: 'The plaintiff has been set up by the sole defendant. But for the said fact, the

plaintiff would not have filed the present application for impleadment of these proposed defendants. The allegations that the plaintiff and the GPA holder are residents of Nellore and that, on enquires, they came to know about the execution of the sale deeds in favour of these proposed parties and that thereafter they had obtained registration extracts of the sale deeds, on 09.06.2014, are not known to these proposed defendants. The plaintiff and the GPA holder of the plaintiff are very much aware of the sale of portions of the plaint schedule property by the defendant to these proposed defendants. The property was sold by the 1st defendant to these proposed defendants for valid consideration and for family necessities and the possession of properties sold to these proposed defendants was delivered to them on the same day of the sale transaction, that is, on 28.02.2008. The plaintiff also derived benefit out of the said sale transactions. The sale deeds were executed by the sole defendant on his behalf and on behalf of the plaintiff-B. Narayana Babu and his daughter-Moulika, Bhaskar Gupta and his daughter Sunitha and son Chaithanya. These proposed defendants are in possession and enjoyment of the property purchased by them. They were also given pattadar pass book/ s by the revenue authorities in recognition of their title and possession over the lands purchased by them. The two registered sale deeds obtained by the proposed defendants are binding on the plaintiff. The plaintiff is not entitled to question the registered sale deeds and seek impleadment of these proposed parties as defendants 2 & 3 in the suit. The suit claim is barred by law of limitation. Hence, the petition may be dismissed.'

7. At the hearing, learned counsel for the plaintiff and learned counsel for the proposed defendants reiterated the respective contentions of the parties.

8. Learned counsel for the plaintiff further submitted as follows: 'The suit for partition was instituted in the year 2009. Since the plaintiff is being represented by a GPA holder and as the plaintiff and the GPA holder are

residents of Nellore they are not aware of the sale transactions between the sole defendant on one hand and the proposed defendants 2 & 3 on the other in respect of the part of the plaint schedule property, which is the subject matter of the suit for partition. Having come to know of the sale transactions, the GPA holder of the plaintiff obtained the registration extracts of the sale deeds executed in favour of the proposed defendants. The proposed defendants acquired right, title and interest in the suit schedule property. Their presence is necessary for effective adjudication of the *lis* as any decree obtained in their absence as parties to the suit would be of no avail and may not be executable against the said proposed defendants. Though the petition was not opposed by the sole defendant, the trial Court erroneously dismissed the petition by *inter alia* observing that the petition to implead the proposed defendants was filed after lapse of six years after the institution of the suit and the request for impleadment was made belatedly and that the suit is an old identified suit and that the proposed defendants alleged in their defence that they are in possession of a part of the plaint schedule property since the year 2008, that is, from the date of their purchase in the year 2008. The trial Court wrongly appreciated the facts and the legal position obtaining.'

9. Learned counsel for the proposed defendants supported the orders of the trial Court by reiterating the case of the proposed defendants and *inter alia* contended that though the sales in favour of the proposed defendants are long prior to the suit, the plaintiff failed to implead them at the inception as parties to the *lis* and that the present petition is filed belatedly as rightly held by the trial Court and that the claim against the proposed defendants is barred by law of limitation and that there is no merit in the revision.

10. Admittedly, the proposed defendants purchased portions of the plaint schedule property which is subject matter of the suit for partition. They are claiming right, title and interest as well as possession over the portion of the

plaint schedule property purchased by them from the sole defendant. Thus, they are having interest in part of the plaint schedule property cannot be denied. It is also one of the contentions of the proposed defendants that the sole defendant was responsible for the plaintiff filing the present application for their impleadment. Therefore, one of the contentions of the proposed defendants is that there is collusion between the plaintiff and the sole defendant. In that view of the matter the impleadment of the proposed defendants as defendants 2 & 3 would sub-serve their interest as, in the event they are impleaded, they can adequately protect their interests by raising all available defences and also by claiming equities, if necessary. Such a course is necessary in the facts and circumstances of the case. As rightly contended by the learned counsel for the plaintiff, if any decree is granted in favour of the plaintiff in the absence of the proposed defendants as party defendants to the suit that would lead to unnecessary complications at the time of passing of the final decree, its execution, separation of shares by metes and bounds and delivery of possession.

11. Dealing with the legal position, in *Mumbai International Air port Pvt. Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd. And others*¹ the Supreme Court having considered the scope of and ambit of the provision of law held as follows:

Let us consider the scope and ambit of Order 1 of Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo motu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the

¹ AIR2010SC3109

Code, the court will of course act according to reason and fair play and not according to whims and caprice. This Court in *Ramji Dayawala & Sons (P) Ltd. v. Invest Import*: 1981 (1) SCC 80 reiterated the classic definition of 'discretion' by Lord Mansfield in *R. v. Wilkes* 1770 (98) ER 327 that 'discretion' when applied to courts of justice, means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague, and fanciful, 'but legal and regular'. We may now give some illustrations regarding exercise of discretion under the said Sub-Rule.

12.1) If a plaintiff makes an application for impleading a person as a defendant on the ground that he is a necessary party, the court may implead him having regard to the provisions of Rules 9 and 10(2) of Order 1. If the claim against such a person is barred by limitation, it may refuse to add him as a party and even dismiss the suit for non-joinder of a necessary party.

12.2) If the owner of a tenanted property enters into an agreement for sale of such property without physical possession, in a suit for specific performance by the purchaser, the tenant would not be a necessary party. But if the suit for specific performance is filed with an additional prayer for delivery of physical possession from the tenant in possession, then the tenant will be a necessary party in so far as the prayer for actual possession.

12.3) If a person makes an application for being impleaded contending that he is a necessary party, and if the court finds that he is a necessary party, it can implead him. If the plaintiff opposes such impleadment, then instead of impleading such a party, who is found to be a necessary party, the court may proceed to dismiss the suit by holding that the applicant was a necessary party and in his absence the plaintiff was not entitled to any relief in the suit.

12.4) If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bona fides etc., the court will normally implead him, if he is found to be a proper party. On the other hand, if a non-party makes an application seeking impleadment as a proper party and court finds him to be a proper party, the court may direct his addition as a defendant; but if the court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit; or the court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms. For example, if 'D' claiming to be a co-owner of a suit property, enters into an agreement for sale of his share in favour of 'P' representing that he is the co-owner with half share, and 'P' files a suit for specific performance of the said agreement of sale in respect of the undivided half share, the court may permit the other co-owner who contends that 'D' has only one-fourth share, to be impleaded as an additional defendant as a proper party, and may examine the issue whether the plaintiff is entitled to specific performance of

the agreement in respect of half a share or only one-fourth share; alternatively the court may refuse to implead the other co-owner and leave open the question in regard to the extent of share of the vendor-defendant to be decided in an independent proceeding by the other co-owner, or the plaintiff; alternatively the court may implead him but subject to the term that the dispute, if any, between the impleaded co-owner and the original defendant in regard to the extent of the share will not be the subject matter of the suit for specific performance, and that it will decide in the suit, only the issues relating to specific performance, that is whether the defendant executed the agreement/contract and whether such contract should be specifically enforced. In other words, the court has the discretion to either to allow or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party, merely because he is a proper party.”

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“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 1 Rule 10(2) of Code of Civil Procedure ('Code' for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

Court may strike out or add parties.

(2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

“The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the question involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party

or proper party. 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 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 a proper or necessary party, the court has no 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 proper party to the suit for specific performance."

12. The law is well settled that the object of Order I Rule 10 of the Code is to bring before the Court at the one and the same time all parties interested in dispute and finally determine all controversies once and for all in the presence of all parties without delay, inconvenience and expenses of the several actions, trials and inconclusive adjudication. Having regard to the facts peculiar to this case, this Court is of the opinion that the addition of the proposed parties as defendants 2 & 3 is necessary for the purpose of resolving the controversy between the parties once and for all and to set at rest the controversy and that the refusal to grant the request of the plaintiff for impleadment of the third parties would only create needless complications at the stage of the execution in the event of the plaintiff-revision petitioner succeeding in the suit.

13. In the considered view of this Court, the facts and the legal position applicable to the facts are overlooked by the trial Court while dismissing the application of the plaintiff. For the aforesaid reasons, this Court finds that the order impugned brooks interference.

14. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. As a sequel, IA.no.107 of 2014 in OS.no.21 of 2009 stands allowed. The plaintiff is permitted to implead the proposed parties as defendants 2 & 3 to the suit and make necessary consequential amendments to the plaint as prayed for in the petition by following the procedure.

There shall be no order as to costs.

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

27.10.2017
Vjl

M. SEETHARAMA MURTI, J

