

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION No.423 of 2014

ORDER:

This civil revision petition is filed questioning the orders passed in I.A.No.531 of 2013 in O.S.No.185 of 2013 on 03.01.2014 by the III Additional Junior Civil Judge, Vijayawada.

The suit O.S.No.185 of 2013 is filed for the following reliefs:

- a) For declaring that E, F, G, H portion shown in the plaint plan and the plaint schedule is a part of the total property of the plaintiff;
- b) For directing the defendant to deliver the vacant possession of 40 sq.yards of land shown in the plaint schedule and red colour marked in the E, F, G, H in the plaint plan after demolishing the illegal construction by the defendants.;
- c) For permanent injunction restraining the defendants, his men and persons in aid and support of him from ever interfering with the peaceful possession and enjoyment of the schedule property and from encroaching the schedule property in any manner whatsoever.

During course of hearing of the matter, I.A.No.531 of 2013 was filed under Order I Rule 10 CPC seeking permission of the court to bring on record respondents Nos.5 to 8 as the defendants in the suit. The application was contested and thereafter, the impugned order was passed by which the application was allowed. The court directed that respondents Nos.5 to 8 are to be impleaded in the plaint and in the interlocutory application. Questioning the said order, the present civil revision petition is filed.

The learned counsel for the petitioners submits that the respondents are not proper and necessary parties. It is his contention

that the suit as filed has to be tried on its own and the proposed parties are not necessary for adjudication of the matter. He relies upon the judgment of this court in *Ainala Kumar v. Pulakanti Narsi Reddy*¹ and argues that the plaintiff does not have right to implead the third parties to the suit. Therefore, he questions the manner in which the impugned order is passed.

The learned counsel for the respondents, on the other hand, submits that the impugned order is a perfectly valid order and that a reading of the affidavit filed in support of the application clearly shows that the proposed respondents are in possession of the property. He draws the attention of this court to paragraph No.5 of the affidavit.

This court after hearing both the learned counsel notices that in paragraph No.5 of the affidavit filed in support of the application, it is clearly averred that the defendants have completed the construction in the remaining half of the property. It is also clearly mentioned that the proposed parties are now in possession of the property and have occupied the same. Therefore, in order to seek declaration for the total property and to remove the constructions which are made by the existing defendants and the proposed parties, their presence is necessary for effective disposal of the suit. The primary test that has to be passed in an application filed under Order I Rule 10CPC is that the proposed parties should be necessary parties without whose presence an effective decree cannot be passed.

This court notices that the 1st respondent/plaintiff herself admits that the proposed parties are now in possession of the property. They along with other existing defendants have constructed in the suit schedule

¹ 2008 (3) ALT 671

property and have also occupied the same. Therefore, this court is of the opinion that the proposed respondents are necessary parties. For an effective and total adjudication and if proved to grant the reliefs that are prayed for, the presence of the proposed parties is necessary.

The decision cited by the learned counsel for the petitioners is not applicable, as in the said case the suit was filed for injunction, and as rightly noticed by the learned single Judge in a suit for injunction what is needed to be proved is the possession of the plaintiff on the date of the suit. In the case on hand, the suit is filed for declaration and for removal of constructions that are made in the suit schedule property. Therefore, the said judgment is not really applicable to the present case.

There is a clear prayer for demolition of the illegal constructions made by the defendants. This court also notices that the suit is filed in February, 2013 and this application for amendment is moved in July, 2013. Therefore, no harm will be caused to the revision petitioners. They could always contest the suit on merits.

Hence, this court is of the opinion that there are no merits in the present revision petition and the same is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

D.V.S.S.SOMAYAJULU,J

Date: 05.12.2018
Dsr