

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.417 OF 2018

ORDER:

This revision petition is filed under Article 227 of the Constitution of India challenging the order dated 08.11.2017 in I.A.No.343 of 2017 in O.S.No.1874 of 2017 passed by the X Junior Civil Judge, City Civil Court, Hyderabad, refusing to implead the petitioners as proposed defendants 2 to 7 by exercising power under Order 1 Rule 10(2) C.P.C.

2. It is the contention of the petitioners that they are having control over the Church and that the 2nd respondent is running school in part of the land and remaining extent is under the control of the petitioners. But taking advantage of the interim injunction obtained against the 2nd respondent/defendant, the 1st respondent/plaintiff is trying to raise construction, since the petitioners, who are not parties to the said suit cannot prevent them. Therefore, the petitioners prayed to allow them to come on record as proper and necessary parties.

3. The 1st respondent filed counter before the trial Court raising several contentions *inter alia* contending that the petition is not maintainable as the contentions raised in the petition are invented to grab the property and that the petitioners have nothing to do with the property etc.

4. Upon hearing both counsel the trial Court negated the relief assigning specific reasons. Aggrieved by the order, the present revision is filed on various grounds, which will be discussed hereinafter.

5. During hearing, Sri T.N.M.Ranga Rao, Counsel for the petitioners reiterated the contentions urged in the petition before the Court mostly with regard to the possession and enjoyment of the property while contending that the 2nd respondent has no right over the property except that he is member of the Church. Under the guise of interim order, the 1st respondent is contemplating to raise construction in the schedule property infringing the rights of the petitioners, determent of right of the petitioners. Therefore, the petitioners are proper and necessary parties to the suit and prayed to set aside the impugned order dated 08.11.2017.

6. The 1st respondent filed suit against the 2nd respondent seeking relief of injunction simplicitor alleging that the 2nd respondent tried to infringe or invade the legal right or obligation of the 1st respondent which gave rise the cause of action against the 2nd respondent and in the absence of raising any contention that these petitioners are also contemplating to interfere with the peaceful possession and enjoyment of the property, if any infringement or invasion of the legal right of the 1st respondent, in a suit for bare injunction, the third party cannot be permitted to come on record since they are not proper and necessary parties to the suit.

7. Order 1 Rule 10(2) C.P.C. confers power of the Court to permit any party to implead 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. Thus, the Court is empowered to implead any party either on the application, or without application only when the Court satisfied that the presence of the proposed party before the Court is necessary or proper in order to enable the Court effectually and completely adjudicate the lis before it.

8. The Madras High Court in **S.D. Joseph and others v E. Ebinesan and others**¹ held that every member who is having interest and right should be given an opportunity of being heard and the Court must see whether subject matter could be factually adjudicated upon in the absence of proposed parties in a case where the property belonged to YMCA, a public Trust. Therefore, the persons who are interested can come on record subject to satisfaction of the Court that even in the absence of proposed parties, the suit pending before it can be decided.

9. But the word 'proper and necessary party' is not defined in the Code of Civil Procedure. In **Mumbai International Airport (P) Ltd. V Regency Convention Centre and Hotels (P) Ltd.**² the word 'proper and necessary party' defined as follows:

"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

¹ 2009(5) CTC 193

² 2010(7) SCC 417

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.”

10. In Para No.13 of the same judgment, the Apex Court held as follows:

“ 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 I Rule 10(2) of Code of Civil Procedure ('Code' for short), which provides for impleadment of proper or necessary party”.

11. It is clear from the law declared by the Apex Court that only proper and necessary parties are to be impleaded as parties to the suit.

12. In a suit for perpetual injunction, the Court is required to decide as to who is in lawful possession as on the date of filing the suit and whether the defendant made any attempt to infringe or invade the right or obligation of the plaintiff and the title is irrelevant in a suit for bare injunction. In view of the law declared by the Courts in the above judgments, in a suit for injunction simplicitor, the third party cannot be permitted to come on record to adjudicate the rights of the parties with reference to the title to the property and if for any reason, the petitioners are apprehending any threat of interference with the possession and enjoyment of the property or infringement or invasion of their right under the guise of injunction, the interim injunction granted in favour of the 1st respondent against the 2nd respondent is not binding on the petitioners and therefore, they are entitled to claim

appropriate relief before a competent Court by filing a separate suit, but in the present suit, they cannot be impleaded as parties since they are neither necessary or proper parties. Hence, I find no illegality or irregularity in the impugned order passed by the trial Court warranting interference of this Court while exercising power under Article 227 of the Constitution of India.

13. With the above observation, the civil revision petition is dismissed. There shall be no order as to costs.

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

30.01.2018

Note: issue c.c. by 05.02.2018

b/o

kvrn

M. SATYANARAYANA MURTHY, J

