

THE HON'BLE SRI JUSTICE SANJAY KUMAR
CIVIL REVISION PETITION NO.1408 OF 2018

ORDER

This civil revision petition under Article 227 of the Constitution arises out of the order dated 09.01.2018 passed by the learned VIII Additional District and Sessions Judge, Ranga Reddy District at L.B. Nagar, in I.A.No.918 of 2017 in O.S.No.342 of 2012. The said I.A. was filed by respondents 6 to 13 herein under Order 1 Rule 10(2) C.P.C. seeking to be impleaded as defendants in the suit. By the order under revision, the trial Court allowed the I.A. and impleaded them as defendants 6 to 13. Aggrieved thereby, the plaintiffs filed this revision petition.

By order dated 16.03.2018, this Court granted interim suspension of the order under revision, opining that the question as to whether the newly impleaded parties could seek redressal of their grievance in the suit filed by the petitioners required examination. I.A.No.2 of 2018 was filed by the newly impleaded defendants, respondents 6 to 13 herein, to vacate the said order.

Comprehensive arguments having been advanced by Sri H.Venugopal, learned counsel for the petitioners-plaintiffs, and Sri Deepak Bhattacharjee, learned senior counsel representing Sri Swaroop Oorilla, learned counsel for respondents 6 to 13-defendants 6 to 13, the matter is amenable to final disposal at this stage.

Parties shall hereinafter be referred to as arrayed in the suit.

O.S.No.342 of 2012 was filed by the plaintiffs against the State of Telangana and its Revenue officials, defendants 1 to 5, seeking a declaration that they were the absolute owners and possessors of the suit schedule land admeasuring Acs.114.37 guntas in Sy.No.228 (old Sy.No.425) of Manchirevula Village, Gandipet Mandal, Ranga Reddy District. As per the

plaint averments, the suit schedule land originally belonged to one Roja Begum. It was sold by her to one Syed Abdul Razak @ Nizam Asif Nawab-ul-mulk. After his life time, his son Syed Abdul Rasheed inherited the property. It was brought to sale through public auction by the Court in relation to execution of a decree and one Syed Mohd. Ismail, along with his brother, Syed Mohd. Hassan, purchased it in the said auction sale. This sale was held in 1322 Fasli. Syed Mohd. Ismail died in 1953 leaving behind two sons and two daughters, namely, Syed Hyder Hassan, Syed Ahmed Hassan, Ashraf Begum and Bismilla Begum. Syed Hyder Hassan died issueless in 1979 while Ashraf Begum and Bismilla Begum also died issueless in 1976 and 1996 respectively. Syed Ahmed Hassan thereafter died issueless in 2006. The other joint-purchaser, Syed Mohd. Hassan, died in 1959 leaving behind his son, Syed Vicarul Hassan. Upon the death of Syed Vicarul Hassan in 1986, his son and daughter, Syed Noorul Hassan and Zehra Mehdi, the first plaintiff, inherited the property. Syed Noorul Hassan died issueless on 13.04.2004 but left behind his widow, Siyanathunnisa Begum, the second plaintiff. Being the successors-in-interest of the title holders, the plaintiffs filed the subject suit alleging that the Government was staking a claim in the suit schedule land by treating it as Government poramboke. They therefore sought declaration of their title against the State and its Revenue authorities.

While so, the subject I.A. was filed by third parties to the suit seeking to be brought on record as defendants. In the affidavit filed in support thereof, Mariya Banu, the third applicant in the I.A., stated that her mother, Zeenath Banu, was the first wife of Syed Noorul Hassan while the second plaintiff in the suit was his second wife. She further claimed that out of this wedlock between Syed Noorul Hassan and her mother, four children were born, viz., two sons and two daughters. The first son, Syed Imranul Hassan,

expired leaving behind one son and two daughters. Mariya Banu asserted that in the light of the plaint averment that Syed Noorul Hassan died issueless leaving behind only his widow, the second plaintiff, their rights, as the legal heirs of Syed Noorul Hassan, were affected and it was therefore necessary that they be impleaded as parties to the suit. Zeenath Banu, the alleged first wife of Syed Noorul Hassan, along with her surviving two daughters and son apart from two granddaughters and a grandson, through the deceased son, Syed Imranul Hassan, were the applicants in the I.A.

Though the plaintiffs contested the I.A. denying the claim of the implead applicants as to their relationship with Syed Noorul Hassan; pointing out that they had already filed a suit for partition in O.S.No.70 of 2015 on the file of the learned II Additional District Judge, Ranga Reddy District at L.B.Nagar; and asserting that they were neither necessary nor proper parties to the subject suit, the trial Court allowed the implead application.

The reasoning of the trial Court was that this would avoid multiplicity of proceedings by bringing before the Court all the persons interested in the dispute relating to the subject matter, so that all controversies involved in the suit could be determined without delay, once and for all, in the presence of all the parties. The trial Court observed that the claim of the implead applicants was that they had several documents to prove their relationship with Syed Noorul Hassan and as these contentions would have to be looked into for a comprehensive adjudication of the suit, they were necessary and proper parties. The I.A. was accordingly allowed by impleading them as defendants 6 to 13 in the suit.

Sri H.Venugopal, learned counsel, would argue that the trial Court failed to recognize that the suit was filed only against the State and its officials for a declaration as to the plaintiffs' title over the suit schedule land

and the same did not require the trial Court to go into the *inter se* disputes between the plaintiffs and the implead applicants, who had already filed an independent partition suit. He would therefore contend that the implead applicants were neither necessary nor proper parties to the suit and their presence did not contribute anything at all to the determination of the issues arising in the suit between the plaintiffs and the State and its officials.

Sri Deepak Bhattacharjee, learned senior counsel, would however contend that the trial Court was justified in allowing the implead application, keeping in mind the plaint averment to the effect that the plaintiffs were the exclusive owners of the suit schedule land, which would have the effect of extinguishing the rights claimed by the implead applicants.

Having perused the record, this Court finds that the plaint averments and the suit prayer in O.S.No.342 of 2012 are directed only against the State and its officials. The declaration sought in the suit, even if granted, would be binding only upon the defendants arrayed therein. The issue for consideration in the suit is the claim of the plaintiffs that the suit schedule land is not Government poramboke land and that it is the private property which vested in their predecessors-in-title and which they now claim through inheritance. As to whether there were other inheritors is not an issue which arises for consideration in the suit, as framed.

It appears that the implead applicants already filed a partition suit wherein their alleged relationship with Syed Noorul Hassan would necessarily have to be determined. Though Sri Deepak Bhattacharjee, learned senior counsel, would state that the present suit schedule land has not been included in the suit schedule properties in the partition suit, the same has no relevance so far as determination of the present suit claim of the plaintiffs is concerned. The plaint averment with which the implead applicants have

objection would not be binding on them if they are not parties to the suit. Even if they do get impleaded, the scope of the suit cannot change to the extent of empowering the trial Court to go beyond the suit prayer and decide the *inter se* rival claim between the plaintiffs and the impleaded defendants 6 to 13. The newly impleaded defendants do not seek to support the plaintiffs in their claim against the State or allege that they have anything to contribute in that regard. They merely wish to come on record to settle their own rival claim against the plaintiffs, but the same is not an issue which can be taken up by the trial Court in this suit.

In PANKAJBHAI RAMESHBHAI ZALAVADIYA V/ s. JETHABHAI KALABHAI ZALAVADIYA¹, the Supreme Court pointed out that Order 1 Rule 10 CPC enables the Court to add any person as a party at any stage of the proceedings if the presence of that person in Court is necessary to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit.

In the case on hand, the presence of these impleaded defendants is not at all necessary to enable the Court to adjudicate as to whether the land in question is a Government poramboke land or whether it vested as private land in the plaintiffs' predecessors-in-title. As pointed out in the aforesaid judgment, it is only when the Court finds that in the absence of the person sought to be impleaded as a party to the suit, the controversy raised in the suit cannot be effectively and completely settled, that the Court would implead such person.

Presently, the rival claim between the plaintiffs and the impleaded defendants 6 to 13 does not even form part of the controversy in the suit but the said defendants are seeking to settle their own dispute with the plaintiffs

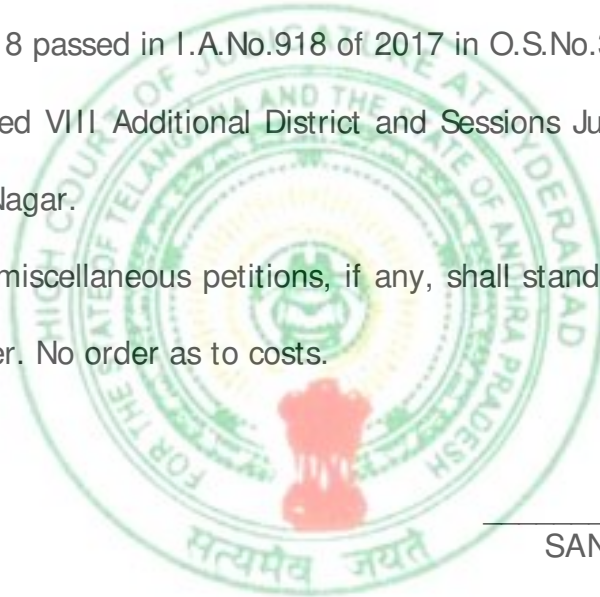
¹ (2017) 9 SCC 700

by intervening in the suit filed by them against the State and its officials. The scope of the suit cannot be altered at the behest of these newly impleaded defendants. The trial Court was therefore in error in opining that it could adjudicate that issue in this suit so as to avoid multiplicity of proceedings.

Be it viewed from any angle, the presence of the newly impleaded defendants 6 to 13 is neither necessary nor proper for adjudication of the suit claim of the plaintiffs against the State and its officials. The order under revision holding to the contrary is therefore unsustainable on facts and in law.

The civil revision petition is accordingly allowed setting aside the order dated 09.01.2018 passed in I.A.No.918 of 2017 in O.S.No.342 of 2012 on the file of the learned VIII Additional District and Sessions Judge, Ranga Reddy District at L.B. Nagar.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.



SANJAY KUMAR, J

14th SEPTEMBER, 2018

PGS