

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CIVIL REVISION PETITION No.366 of 2017**

**ORDER:**

This civil revision petition is filed under Article 227 of Constitution of India challenging the order dated 17.11.2016 passed in I.A.No.527 of 2016 in O.S.No.399 of 2010 by the IV Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, whereby, the petition filed under Order 1 Rule 10 (2) of Code of Civil Procedure (for short "C.P.C.") was dismissed.

The petitioner herein is the plaintiff and filed a petition under Order 1 Rule 10 (2) of C.P.C. before the trial Court to implead the respondent Nos.27 to 35 as defendant Nos.27 to 35 in the suit. The plaintiff filed the suit to declare the unregistered document i.e. development agreement dated 25.02.1993 is not legal and unenforceable against him, but due to oversight, he could not make the so-called executants of the said document i.e. proposed defendant Nos.27 to 35 as parties to the suit and he noticed the said mistake recently and sought to implead them as parties to the suit.

The respondent Nos.18 and 20/defendant Nos.18 and 20 filed counter denying the material allegations and highlighted the order passed by this Court in C.R.P.No.3902 of 2006, whereby this court withdrawn and transferred all the suits to one Court and directed to dispose of all the suits within a period of 6 months, but the petitioner did not cooperate for disposal of the suit as directed

by this Court and protracting the litigation and requested to dismiss the petition.

The trial Court upon hearing argument of both the counsel, accepted the contention of the contesting respondents that despite the direction issued by this Court in C.R.P.No.3902 of 2006 the petitioner protracting the litigation and dismissed the petition on the ground of delay in filing the petition.

Aggrieved by the same, the present revision is filed on the ground that the delay is not a ground to dismiss the petition filed under Order 1 Rule 10 (2) of C.P.C. It is further contended that during the pendency of the proceedings, it would be appropriate for the plaintiff to file the application for impleading the proper and necessary parties to the lis, but the Court below erred in dismissing the petition on the ground of delay.

During hearing, learned counsel for the petitioner reiterated the contentions urged in the revision while demonstrating as to how the proposed parties are necessary parties to the suit though no relief is claimed against them and requested to set aside the order passed by the Court below.

Learned counsel for the respondent No.1/defendant No.1 opposed the petition on the ground of delay and contended that in spite of the direction issued by this Court in C.R.P.No.3902 of 2006, the petitioner is not cooperating with the respondents and protracting the litigation by filing petitions before the Court, thereby preventing the Court from disposing the suit.

The petitioner/plaintiff filed the suit to declare the unregistered document i.e. development agreement dated 25.02.1993 is not legal and unenforceable against him. Since the petitioner is a party to the said unregistered document dated 25.02.1993, he sought for relief of declaration as stated above, but the co-executants of the document are not impleaded as parties to the document. In the present petition, the petitioner/plaintiff sought to implead them as parties to the suit. As the proposed parties also co-executants of the document, in their absence the suit cannot be decided effectively though no relief is claimed against them.

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.**"<sup>1</sup> 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 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."*

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

---

<sup>1</sup> 2010(7) SCC 417

*“ 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”.*

In view of the judgment of the Apex Court, the petitioners are proper parties to the suit for declaration though no relief is claimed against them. As per Order 1 Rule 10 (2) of C.P.C. 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. Therefore, the language used in Order 1 Rule 10 (2) of C.P.C. i.e. “at any stage of the proceedings” indicates that even at the appellate stage by exercising power under Order 1 Rule 10 (2) of C.P.C. the proper or necessary parties to suit can be added.

In the present case, the proposed parties are also co-executants of the document, though no relief is claimed against them, in their absence the suit cannot be decided effectively. Therefore, they are proper parties to the suit though not necessary parties. But the Court below did not record any finding as to whether they are proper or necessary parties, but dismissed the

petition on the ground of delay. But the delay is not ground in view of the language used in Order 1 Rule 10 (2) of C.P.C. Therefore, dismissal of application filed under Order 1 Rule 10 (2) of C.P.C. on the ground of delay is an apparent error warranting interference of this Court exercising power under Article 227 of the Constitution of India.

In view of my foregoing discussion in the earlier paragraphs, the proposed parties are proper parties and they shall be brought on record as defendants more particularly when they reported no objection to come on record. Therefore, the order passed by the Court below is liable to be set aside. However, the delay that caused on account of filing the petition can be compensated by granting appropriate costs.

In the result, the revision is allowed setting aside the order dated 17.11.2016 passed in I.A.No.527 of 2016 in O.S.No.399 of 2010 by the IV Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar. The I.A.No.527 of 2016 in O.S.No.399 of 2010 is allowed on payment of costs of Rs.2,000/- (Rupees Two thousand only) to the contesting respondent Nos.18 and 20/defendant Nos.18 and 20 within six (6) weeks from today. In the event of failure to pay the costs, the present order shall stand cancelled automatically.

The miscellaneous petitions pending, if any, shall also stand closed.

---

**JUSTICE M. SATYANARAYANA MURTHY**

06.11.2018  
Ksp