

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2714 of 2018

ORDER:

1) Challenging the order dated 02.04.2018, passed in I.A.No.276 of 2018 in O.S.No.779 of 2016, on the file of the Principal Junior Civil Judge, Rajamahendravaram, wherein an application filed Under Order I Rule 10 of C.P.C. to permit the 2nd petitioner to implead herself as 2nd plaintiff in the suit and also permit her to make consequential amendments to the plaint, was dismissed, the present Civil Revision Petition came to be filed under Article 227 of the Constitution of India.

2) The facts in issue are as under:

The averments in the affidavit filed in support of the petition would show that the 1st petitioner is the brother of the 2nd petitioner. He filed a suit for declaration of title and also for permanent injunction. After the death of their parents, they entered into a partition deed where under the 1st petitioner got 'A' schedule property and the 2nd petitioner got 'B' schedule property vide registered partition deed 09.06.2003. While things stood thus, due to inadvertence an extent of 22 square yards of property

towards north of the plaint schedule property is left out without division. Both the petitioners are the absolute owners and possessors of said 22 square yards. It is further stated that after the construction of a terraced building, the schedule site is set apart to make use of the same in future as a shop or godown. It is said that the respondent high handedly and illegally is trying to encroach upon 22 square yards, by raising constructions. The 1st petitioner filed a suit for declaration and injunction, but the respondent proceeded with the construction. As both the petitioners have been in possession and enjoyment of the entire schedule property of extent of 122 yards of the terraced building including the disputed 22 square yards towards northern side of the building and the 2nd petitioner has got interest over the same, she filed an application under Order I Rule 10 and Order VI Rule 17 of C.P.C., to permit her to implead herself as 2nd plaintiff and also permit her to make consequential amendments to the plaint.

3) A counter came to be filed by the respondent denying the allegations made in para Nos.3 and 4 of the affidavit. It is stated that in para No.5 of the plaint, it is pleaded about complete partition and did not state anything about the other property which remained joint one. The 2nd petitioner, who is now proposed to be added as 2nd plaintiff,

in her affidavit stated that an extent of 22 square yards of property situated northern side of the plaint schedule property was left out during division. It is stated that such an averment was introduced at a belated stage, by the proposed plaintiff. Hence, it is pleaded that reference of northern boundary in plaint schedule as well as the registered partition deed falsified the new case which is introduced by the 2nd plaintiff. Having regard to the above, he pleads that adding of 2nd petitioner as 2nd plaintiff is unwarranted.

4) After considering the rival submissions, the trial Court dismissed the said application on the ground that if the proposed amendment is permitted, the nature of suit will be completely changed and the earlier plea of the plaintiff is inconsistent with the proposed amendment and will introduce a new cause of action. Challenging the same the present revision came to be filed.

5) The Learned counsel for the petitioner would submit that the trial Court has erroneously come to a conclusion that if the proposed amendment is permitted, the nature of suit will completely changed and that the petitioners are not entitled to seek the relief of amendment of pleadings and impleadment of 2nd petitioner as 2nd plaintiff. He further

submits that when a party has a direct interest in the litigation, Courts should not deny such party an opportunity to safeguard her interest.

6) Learned counsel appearing for the respondent would submit that the observations of the trial Court are just, proper and reasonable, which cannot be interfered with. If the revision petitioner is allowed to come on record, the cause of action as well as the nature of the suits would change. Therefore, pleads that the 2nd petitioner cannot be allowed to come on record as 2nd plaintiff in the suit.

7) The scope and object of Order 1 Rule 10 of C.P.C. was considered in detail by a learned Single Judge of this Court in *A. Gyaneshwar Rao v. Mahmood Shaireef and another*¹ wherein it has been held as under:

“10. The principles that could be said to emerge in regard to application of the provisions enacted in sub-Rule (2) of Rule 10 of O. 1. C. P. C. and in particular the expressions "whose presence before the court may be necessary" and "in order to enable the court to effectively and completely adjudicate upon and settle all then question involved in the suit" are:

(1) "Settle all the questions involved in the suit" should be construed to mean, not restricting the scope between the parties to the suit, but to a

¹ AIR 1982 AP 155 (1)

wider area concerning the subject-matter of the suit involving even the third party's claim and interest.

(2) The question of addition of parties under R. 10 (2) of O. 1 is generally not one of initial jurisdiction but of a judicial discretion which has to be exercised in view of the facts and circumstances of each case. The jurisdictional aspect is in the limited sense contemplated under Sec. 115 of the C. P. C.

(3) For effectual and complete adjudication of the questions involved in the suit, the presence of a third-party, even if it is not necessary, but if proper, should be allowed to be added as a party if applied for.

(4) In a suit relating to property, the person to be added as party should have a direct interest as distinct from a commercial interest in the subject-matter of the litigation.

(5) Where the subject-matter of a litigation is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the court is of the opinion that by adding that party, it would be in a better position effectual and completely to adjudicate upon the controversy.

(6) The rule laid down in Sc. 43 of the specific Relief Act is not exactly a rule of res judicate. It is narrow in one sense and wider in another.”

8) From the judgment of this Court referred to above, it is clear that addition of parties is generally not one of initial

jurisdiction but of judicial discretion which has to be exercised having regard to the facts and circumstances of each case. The Court further held that in a suit relating to property, the person to be added as party should have a direct interest as distinct from a commercial interest in the subject-matter of the litigation.

9) In the instant case the 2nd petitioner has got interest over the suit schedule property, as there is no division of 22 square yards which is situated on the northern side of the plaint schedule property, at the time of partition and the same is left out to make use of the same in future as a shop or godown. In view of the above, the rights of 22 square yards are not crystallized till date. It is well settled principles of law that if a party shows that it has some interest in the property, which is subject matter of litigation, he cannot be prevented from coming on record to safeguard his/her interest. Hence, it would be just and proper to implead the 2nd petitioner as 2nd plaintiff in the suit, so as to enable her to place her case before the Court.

10. In view of the above discussion. I hold that the revision petitioner is entitled to come on record as 2nd plaintiff in the suit. Accordingly, the Civil Revision Petition is allowed setting aside the order dated 02.04.2018 passed

in I.A.No.276 of 2018 in O.S.No.779 of 2016 on the file of the Principal Junior Civil Judge, Rajamahendravaram. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

13.07.2018
gkv

