

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.4607 OF 2017

ORDER:

This revision petition is filed under Article 227 of the Constitution of India challenging the order dated 09.08.2017 in I.A.No.117 of 2016 in I.A.No.113 of 2016 in O.S.No.102 of 2016 passed by the Sub Divisional Magistrate and Special Assistant Agent to Government, Mobile Court, Bhadrachalam, Bhadradri Kothagudem, allowing the application filed under Rule 42 (c) of A.P.Agency Rules, 1924 read with Order I Rule 10(4) C.P.C.

The petitioner herein was the respondent/plaintiff in the petition before the Sub Divisional Magistrate and he filed a suit for injunction simplicitor to restrain respondents 2 and 3 herein alleging that he is in possession of the property and respondents are attempting to infringe or invade his legal right. While the matter stood thus, the 1st respondent proposed party filed the application under Rule 42(c) of the Agency Rules to implead him as proper and necessary party to the main suit as third defendant.

The first respondent filed petition contending that he is absolute owner and possessor of the suit schedule property and in his absence the dispute cannot be decided and as such he is proper and necessary party to the proceedings to decide the dispute effectively and completely and prayed to allow the petition.

The petitioner filed counter denying material allegations while asserting that he is in possession and enjoyment of the property and that the 1st respondent cannot come on record under Rule 42(c) of A.P. Agency Rules or under Order 1 Rule 10(2) C.P.C.

and the remedy available to the 1st respondent is elsewhere not in this petition and prayed to dismiss the petition.

The Sub Divisional Magistrate extracted affidavit filed along with the petition and counter in paras 1 to 4 of the order, came to the conclusion in para 4 as follows:

Upon perusing the documents filed by the implead petitioner and hearing argument of both sides, it is clear that the implead petitioner is necessary party to the suit.

Aggrieved by the impugned order, the present revision is filed on various grounds mainly on the ground that in a suit for injunction simplicitor, the third party is not supposed to come on record. The petitioner has no grievance against them and the remedy available is elsewhere and not in the present suit and that rights and title of the parties cannot be decided in suit for injunction simplicitor.

During hearing, learned counsel for the petitioner while highlighting the error in the cryptic order passed by the Court below, in the absence of any reasons, the impugned order cannot be sustained and prayed to set aside the impugned order.

None appeared for the respondent though Sri J.Rajeshwar, Advocate was on record as counsel for respondents.

A perusal of the impugned order, it is clear that the Sub Divisional Magistrate extracted only the allegations made in the affidavit filed along with the petition and so also the counter filed by the petitioner herein and the conclusion is that he is a proper and necessary party. But for the conclusion arrived by the Sub Divisional Magistrate, no reason was assigned and thereby the impugned order is cryptic and the same cannot be sustained under law.

Though the Sub Divisional Magistrate, the Presiding Officer of the Court is expected to pass reasoned order, so as to enable the parties to know about the reason to arrive such conclusion. It appears from the impugned order that the officer has been not trained to pass the orders properly.

As per the decision in **M/s Leela Enterprises v Kamar Sultana @ Kamer Hasan**¹ the order shall contain a preliminary or introductory part, showing the form of the application upon which it was made, the manner in which and the place at which, the writ or other originating process was served, the parties appearing any consent, waivers, undertakings or admissions given or made, so placed as to indicate whether they relate to the whole judgment or order or only part of it, and a reference to the evidence upon which the judgment or order is based and a substantive or mandatory part, containing the order made by the Court" as has been said in Halsbury's Laws of England (4th Edition, Volume 26 P. 260).

Thus, in view of the requirements of an order or judgment referred above, an order pronounced on the bench shall contain the reasoning since the judge speaks with authority by his judgment. The strength of a judgment lies in its reasoning and it should therefore be convincing. Clarity of exposition is always essential. Dignity, convincingness and clarity are exacting requirements but they are subservient to what, after all, is the main object of a judgment, which is not only to do but to seem to do justice. In addition to these cardinal qualities of a good judgment, there are the attributes of style, elegance and happy

¹ 2017 (5) ALT 76

phrasing which are its embellishments. In the words of Former Chief Justice of the Supreme Court Sabyasachi Mukharji, the requirement of a good judgment is reason. Judgment is of value on the strength of its reasons. The weight of a judgment, its binding character or its persuasive character depends on the presentation and articulation of reasons. Reason, therefore, is the soul and spirit of a good judgment. Equity, justice and good conscience are the hallmarks of judging. One who seeks to rely only on principles of law, and looks only for the decided cases to support the reasons to be given in a case or acts with bias or emotions, loses rationality in deciding the cases. The blind or strict adherence to the principles of law sometimes carries away a judge and deviates from the objectivity of judging issues brought before him.

In view of the law declared by this Court and the Apex Court referred supra, the order under challenge is contrary to the practice and procedure and not disclosing any reason for arriving such conclusion as to how the petitioner is proper or necessary party and in the absence of any reasoned order passed by the Sub Divisional Magistrate is liable to be set aside.

The suit was filed for injunction simplicitor and for grant of perpetual injunction, the possession of the immoveable property as on the date of filing the suit is relevant and the title of the third party in a suit for injunction simplicitor cannot be decided, even the *inter se* dispute of title cannot be decided in a suit for injunction simplicitor and the Court cannot go into the title except limited purpose arriving at the conclusion that the possession of plaintiff is lawful or not. Hence, in a suit for bare injunction right

of a third party, who asserting that he is owner or possessor of the property cannot be decided. Therefore, the order passed by the Court below is liable to be set aside.

Accordingly, the civil revision petition is allowed setting aside the order dated 09.08.2017 in I.A.No.117 of 2016 in I.A.No.113 of 2016 in O.S.No.102 of 2016 passed by the Sub Divisional Magistrate and Special Assistant Agent Government, Mobile Court, Bhadrachalam, Bhadrachalam Kothagudem remanded to the Court below to restore I.A.No.113 of 2013 in O.S.No. 102 of 2016 to its file and directed to dispose of the petition in accordance with law afresh. There shall be no order as to costs.

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

09.02.2018
kvrm

M. SATYANARAYANA MURTHY,J

