

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.4171 OF 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner - respondent No.1 - plaintiff, questioning the order, dated 03.08.2016, in I.A. No.664 of 2016 in O.S. No.110 of 2013, passed by the learned I Additional Junior Civil Judge, Tirupati, whereby the petition filed by respondent No.1 herein - Sri Swamy Hathiramjee Mutt (for short 'Mutt') under Order I, Rule 10 of the Code of Civil Procedure, 1908 (for short 'Code') was allowed.

2. The petitioner herein filed the suit for injunction restraining respondent Nos.2 to 4 herein from interfering with peaceful possession and enjoyment of the schedule property. Respondent Nos.2 to 4 have set up a title to the property through respondent No.1 - Mutt, the proposed party.

i) Respondent No.1 herein filed I.A. No.664 of 2016 under Order I, Rule 10 of the Code in the aforesaid suit to permit them to come on record as defendant No.4, and the trial Court allowed the same. In the affidavit filed along with petition, it is alleged by the Mutt that the land measuring Acs.7.70 cents in S.No.145, Acs.48.60 cents in S.No.147/1 and Acs.13.35 cents in S.No.148/2, making a total of Acs.74.23 cents, situated at Avilala village is in one contiguous

block, in which Sri Parakalaswamy Mutt, Mysore were having 1/4th share with absolute rights, granted it on permanent lease to one Esnakula Venkata Subba Reddy under a deed, dated 26.11.1915, and in turn the said Venkata Subba Reddy and his father sold their rights of half share along with his permanent leasehold rights in respect of 1/4th share in favour of the Mutt. Subsequently, on 19.09.1917, the Mutt purchased the remaining 1/4th share from its lawful Vendor – Narayana Chetty and came into possession of Acs.74.23 cents as absolute owner in respect of 3/4th undivided share and permanent lessee in respect of 1/4th share of Parakalaswamy Mutt, Mysore. The Mutt executed a registered sale deed in favour of defendant No.1 on 23.07.1983 in respect of Acs.6.35 cents in S.No.148/2. Thereafter, the Mutt obtained permission from the Commissioner, Endowment Department and partitioned the properties between the Mutt and defendant Nos.1 to 3 and their family members. Thereafter, the petitioner herein filed the aforesaid suit and W.P. No.11579 of 2013, which is pending. The Mutt is in continuous possession and enjoyment of the land in S.No.147/1 and erected barbed wire fencing around the land.

ii) On the application of the petitioner herein, the Court Commissioner was appointed to note down the physical features and he filed his report stating that the plaint schedule property in S.No.147/1 and 148/2 is vacant without any structures, and under the guise of orders in I.A. No.175 of 2013, the petitioner herein is trying

to encroach the plaint schedule land. Therefore, the Mutt requested to implead it as defendant No.4 in the aforesaid suit.

3. The petitioner herein as respondent No.1 - plaintiff filed counter denying material allegations, *inter alia*, contending that the Mutt did not approach the Court with clean hands and there is no cause of action to come on record as defendant No.4, as such, the Mutt has no right, title, interest or possession over the schedule property. The Mutt is a stranger to the suit and no-way concerned with the land in dispute i.e., plaint schedule property, but due to collusion between the Mutt and defendant Nos.1 to 3 with a *mala fide* intention, filed the petition and sought to dismiss the same.

4. The trial Court upon hearing argument of both counsel, allowed the petition, permitting the Mutt - third party to come on record as defendant No.4 and directed the petitioner herein to carry out necessary consequential amendment by exercising power under Order I, Rule 10 (2) of the Code.

5. Aggrieved by the said order, the petitioner preferred this revision, on the ground that in a suit for injunction, third party cannot be permitted to come on record as the relief is only to restrain defendant Nos.1 to 3 from interfering with the peaceful possession and enjoyment of the plaintiff over plaint schedule property and the defendants are claiming that they acquired right from the Mutt, therefore, it can never be a proper or necessary party to the suit, and in

a suit for injunction simpliciter, the scope is limited, therefore, requested to set aside the order under challenge as the trial Court committed an error in allowing such application.

6. During hearing, Sri A. Chandraiah Naidu, learned counsel for the petitioner, reiterated the grounds urged in the revision, while contending that the relief in a suit for perpetual injunction is against a person, who is interfering but not against any other party, who is claiming interests in the property either directly or indirectly and the Mutt cannot come on record in a suit for injunction having alienated the property allegedly creating interest in favour of defendant Nos.1 to 3 and requested to set aside the order under challenge.

7. The learned counsel for respondent Nos.3 and 4, Sri B. Sivakesava Reddy, supported the order in all respects, however, at the end, sought permission to examine the concerned predecessor-in-title as a witness in the event of this Court interfering with the impugned order and setting aside the same.

8. As seen from the plaint copy placed on record, the suit is for perpetual injunction restraining the defendants and their men and agents, assignees or anybody claiming under them in any way interfering with peaceful possession and enjoyment of the plaintiff over plaint schedule property. The plaint schedule property is an extent described in the schedule annexed to the plaint is a house bearing old door No.3-56/1 and new door No.2/77, situated in Sai

Nagar Panchayath within the boundaries mentioned therein. But, defendant Nos.1 to 3, are claiming right to enjoy the property and the Mutt was the owner, who created the right in their favour. As seen from the relief claimed in the plaint, the petitioner herein sought for injunction against respondent Nos.2 to 4 - defendants and the persons through whom the defendants are claiming title or right over the property. When no relief is claimed and when the respondents herein intended to prove their right or title to the property, the remedy open to them is to examine the predecessor-in-title as witness, but such person cannot be impleaded as a party or allowed to be impleaded as a party to the suit for injunction simpliciter. The Mutt is neither proper party nor necessary party to the suit for injunction as the Court can decide even in its absence completely and effectively. Therefore, by exercising power under Order I, Rule 10 (2) of the Code, the Court cannot implead third party to come on record in a suit for bare injunction. In **Mumbai International Airport (P) Ltd. v. Regency Convention Centre and Hotels (P) Ltd.**¹ the Apex Court drew the distinction between proper and necessary party 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

¹ 2010(7) SCC 417

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:

“ 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”.

9. In view of the distinction between proper party and necessary party drawn by the Apex Court, applying the same to the present facts of the case, respondent No.1 herein - Mutt, which allegedly parted with the right and enjoyment of the property, cannot come on record as defendant No.4 in the suit as the Mutt has no right or indirect interest in the property having allegedly parted with the right in the schedule property. Therefore, respondent No.1 - Mutt is neither proper party, nor necessary party to the suit for injunction simpliciter and consequently, the order passed by the trial Court is erroneous on the face of record in view of the facts and circumstances of the case and it is liable to be set aside.

10. In the result, the Civil Revision Petition is allowed, setting aside the order, dated 03.08.2016, in I.A. No.664 of 2016 in O.S. No.110 of 2013, passed by the learned I Additional Junior Civil Judge, Tirupati. However, respondent No.1 - Mutt may examine the predecessor-in-title or its representative as a witness, if advised by the trial Court. There is no order as to costs.

Consequently, Miscellaneous Petitions, if any, pending in the present revision, stand closed.

November 09, 2018.
Mgr

M. SATYANARAYANA MURTHY, J

