

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1839 of 2016

ORDER:

This civil revision petition is filed under Article 227 of Constitution of India challenging the order dated 18.11.2015 passed in I.A.No.245 of 2015 in O.S.No.139 of 2013 by the I Additional Junior Civil Judge, Kakinada, whereby, the petition filed under Order 1 Rule 10 of Code of Civil Procedure (for short "C.P.C.") was dismissed.

The petitioner herein filed a petition under Order 1 Rule 10 of C.P.C. alleging that respondent Nos.1 to 5 herein filed a suit against the sole defendant/respondent No.6 herein for declaration of title and other consequential reliefs in respect of property in an extent of Ac.02.43 cents and that she is a proper and necessary party to the suit as patta was granted by Bhoodhan Yagna Board, represented by the Secretary, Gandhi Bhavan, Nampalli, Hyderabad and in view of the patta, she became the owner of the property. Therefore, she is proper and necessary party to the suit and sought to be impleaded as defendant in the suit.

The petition was opposed by the respondent Nos.1 to 5 on the ground that she has no manner of right whatsoever and she is never in possession and enjoyment of the property. As she has no direct interest in the property, she cannot be impleaded and requested to dismiss the petition.

Upon hearing, the trial Court dismissed the petition on the ground no document is filed to establish her right in the property.

In the present petition, the petitioner contended that the Court below failed to appreciate the facts in proper perspective and committed error in deciding the petition and that the petitioner is claiming right over the property based on Patta granted in her favour, which is not disputed by the defendant.

During hearing, learned counsel for the petitioner reiterated the contentions urged in the petition, more particularly highlighted the mistake committed by the trial Court in dismissing the petition for failure of the petitioner to file documents while contending that the petitioner filed documents in support of her contentions to establish her right and requested to set aside the order passed by the Court below and allow the I.A.No.245 of 2015.

Learned counsel for the respondent supported the order passed by the Court below in all respects.

Admittedly, the respondent Nos.1 to 5 filed suit to declare that the orders dated 06.03.2013 issued by the defendant are void, illegal, arbitrary, capricious and violative of principles of natural justice and in sheer violation of the Andhra Pradesh Bhoodan and Gramdan Act 1965 and the Rules framed thereunder and for grant of permanent injunction against the defendant.

The petitioner is claiming independent title over the property by virtue of Patta. When the respondent Nos.1 to 5/plaintiffs filed suit for declaratory relief, the petitioner cannot come on record as she is not party to the order dated 06.03.2013 passed by the

respondent No.6 herein, which is under challenge in the suit. Even if any order is passed, the same is not binding on the petitioner in view of Section 35 of the Specific Relief Act. If any decree passed by the Court below, in the event of plaintiffs succeed in the suit, the same is not binding on the petitioner, her rights cannot be adjudicated in the suit filed by the plaintiffs against the sole defendant.

Unless the petitioner is proper or necessary party to the suit, she cannot come on record as party by invoking provision of Order 1 Rule 10 of C.P.C. But 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.**¹” 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:

“ 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

¹ 2010(7) SCC 417

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 petitioner is neither proper nor necessary party and even in the absence of the petitioner, the Court below can decide the *lis* before it effectively and finally. Hence, I find no ground to reverse the order passed by the Court below, by exercising power under Article 227 of the Constitution of India, which is limited, since the order passed by the Court below is free from any legal infirmity, warranting interference of this Court. Consequently, the revision is liable to be dismissed.

In the result, the civil revision petition is dismissed, confirming the order in I.A.No.245 of 2015 in O.S.No.139 of 2013 dated 18.11.2015 passed by the I Additional Junior Civil Judge, Kakinada. No costs. However, the petitioner is at liberty to adjudicate her claim in independent proceedings.

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

JUSTICE M. SATYANARAYANA MURTHY

29.10.2018
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