

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION No.217 of 2014

ORDER:

This civil revision petition is filed questioning the order, dated 30.12.2013, passed in I.A.No.1740 of 2013, in O.S.No.558 of 2010, by the IV Additional Junior Civil Judge, Kadapa.

Although the plaint copy in O.S.No.558 of 2010 is not filed, still from the available papers, it is clear that the suit is filed for permanent injunction restraining the 1st defendant-Municipal Corporation and their men from interfering with the petitioners' possession and enjoyment of the suit schedule property by laying a road across their plots. It is the stated case of the petitioners that they are the plaintiffs in the lower court, that the suit schedule land was allotted to them and pattas were granted in their favour. In the year 2005, the proposed party encroached into their land and raised structures, then the petitioners filed a suit in O.S.No.387 of 2005 on the file of the Principal Junior Civil Judge, Kadapa, which was decreed in their favour and permanent injunction was granted against the proposed party.

During course of trial of the suit, the present application has been filed. It is mentioned that the municipal corporation is acting at the behest and at the instigation of the proposed party and that during course of the Advocates' boycott, the proposed party also dumped some material into the plots of the petitioners. Therefore, in order to get an effective decree against the instigator, viz., the proposed respondent, the present application is filed to implead the 2nd respondent as a party to the suit. A counter was filed by the present respondent opposing the application.

After hearing both the counsel, the lower court passed the impugned order dismissing the application. Questioning the same, the present revision petition is filed.

This court has heard Sri Y.N.Lohita, learned counsel for the petitioners and Sri V.R.Reddy Kovvuri, learned counsel for the respondents.

The learned counsel for the petitioners submits that in order to get an effective and proper adjudication of their rights, it is necessary that both the instigator and the executor of the plan should be added as parties to the proceedings. It is his contention that the counter affidavit does not deny any of the allegations that are made with regard to the dumping of the material and attempts to interfere. It is also his submission that in order to prove that the proposed party is the instigator, behind the entire scheme of laying road, the proposed party has to be added as a party to the suit so that there can be an effective adjudication of the matter.

In reply thereto, the learned counsel for the respondents submits that there is already an injunction against the proposed party in the earlier suit O.S.No.387 of 2005, by which the proposed respondent is enjoined from interfering with the petitioners' possession and enjoyment. The appeal is still pending against the said judgment. In addition, the learned counsel submits that in a suit for injunction, the plaintiff will have to prove his possession and enjoyment of the property as on the date of the suit and the interference by the respondents, for which he would be entitled to get injunction. The subsequent dumping of the material etc., do not in any way alter the existing cause of action. In addition, the learned counsel submits that whatever be the merits or demerits in the

submissions of the learned counsel for the petitioners, the most essential test in an impleading petition is whether the proposed party is necessary party to dispose of the suit. According to the learned counsel, the proposed respondent is not necessary or proper party for the disposal of the suit for injunction.

This court, after hearing the learned counsel, is of the opinion that the primary threshold that has to be crossed is whether the proposed party is a necessary party and without his presence the suit cannot be disposed of at all. The threat that is spelt out in the plaint is that the 1st respondent is laying a road. It is this acting of laying road that is the cause of action for the suit. Therefore, whether the road is laid by the 1st respondent corporation alone or at the instigation of the proposed respondent is really immaterial in the present case. The petitioners will have to prove that the proposed respondent is acting contrary to law etc. and has attempted to interfere with their peaceful possession and enjoyment of the property. The instigation etc., are matters which can be proved even without the presence of the proposed respondent as a party in the litigation. These are matters of evidence. Ultimately the cause of action as described in the plaint is the action of the 1st respondent municipal corporation in laying a road across the suit schedule property. For determining whether this action is correct or not for grant of injunction, this court is of the opinion that the presence of the proposed party is not necessary. An effective decree can be passed without the presence of the proposed respondent to the suit proceedings. This court does not find any merits in the civil revision petition. The civil revision petition is accordingly dismissed. In the circumstances, no costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

D.V.S.S.SOMAYAJULU,J

Date: 03.12.2018
Dsr

