

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.5006 OF 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 29.08.2017 passed in I.A.No.169 of 2015 in O.S.No.76 of 2009 on the file of the Court of the Junior Civil Judge, Nandalur.

2. Heard the learned counsel for both parties.

3. A perusal of the record reveals that respondent Nos.1 and 2 herein have filed O.S.No.7 of 2005 on the file of the Court of the Junior Civil Judge, Nandalur, against the petitioners herein for perpetual injunction. The petitioners herein have filed O.S.No.73 of 2009 on the file of the Court of the Junior Civil Judge, Nandalur, against respondent Nos.1 and 2 herein for perpetual injunction. Respondent Nos.1 and 2 herein have also filed O.S.No.76 of 2009 on the file of the Court of the Junior Civil Judge, Nandalur, against the Government seeking declaration that the deletion of their names from revenue records as illegal. The trial Court clubbed O.S.No.7 of 2005 and O.S.No.76 of 2009. Respondent Nos.1 and 2, who are the plaintiffs in O.S.No.7 of 2005, withdrawn the suit. The petitioners herein have filed I.A.No.169 of 2015 in O.S.No.76 of 2009, under Order I Rule 10 C.P.C., to permit them to come on record as defendant Nos.4 to 6 in O.S.No.76 of 2009. The trial Court, after considering the material available on record, dismissed the said petition. Hence, the revision petition.

4. Now the point that arises for consideration is:

Whether there is any illegality, irregularity or impropriety in the impugned order?

5. In order to resolve the issue, this Court is placing reliance on the following decisions: --

Vidur Impex & Traders (P) Ltd., v Tosh Apartments (P) Ltd.¹.

Para 41.1 to 41.6 reads as follows:

41.1. The court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the court is necessary for effective and complete adjudication of the issues involved in the suit.

41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.

41.3. A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

41.4. If a person is not found to be a proper or necessary party, the court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

41.5. In a suit for specific performance, the court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

41.6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the court or the application is unduly delayed then the court will be fully justified in declining the prayer for impleadment.

Thomson Press (India) Ltd. v. Nanak Builders & Investors (P)

Ltd². Wherein the Hon'ble apex court held at para 32 as follows:

32. Considering the aforesaid provisions, this Court in *Ramesh Hirachand Kundanmal v. Municipal Corpn. of Greater Bombay*, (1992) 2 SCC 524, held as under: (SCC p. 531, para 14)

"14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable

¹ (2012) 8 SCC 384

² (2013) 5 SCC 397

consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer i.e. he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in *Amon v. Raphael Tuck & Sons Ltd*, (1956) 1 QB 357 : (1956) 1 All ER 273, wherein after quoting the observations of Wynn-Parry, J. in *Dollfus Mieg et Compagnie SA v. Bank of England*, (1950) 2 All ER 605, that the true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject-matter of the action if those rights could be established, Devlin, J. has stated: (*Amon case*, QB p. 371)

‘... the test is: “May the order for which the plaintiff is asking directly affect the intervenor in the enjoyment of his legal rights?”’

6. Let me consider the facts of the case on hand in the light of the above legal principles.

7. It is the contention of the learned counsel for the petitioners that the Government granted patta in favour of the petitioners' father in respect of item No.1 of the suit schedule property on 04.11.1969. It is the further contention of the learned counsel for the petitioners that the Government granted patta in respect of item Nos.2 and 3 of the suit schedule property in favour of the first petitioner on 09.03.1970.

8. At the time of arguments, learned counsel for both parties, in one voice, submitted that the suit schedule property in O.S.No.7 of

2005, O.S.No.73 of 2009 and O.S.No.76 of 2009 is one and the same.

9. Whether the pattas were granted in favour of the petitioners and their father have to be decided during the course of trial. If this Court expresses any opinion touching the merits of the main case, the same may cause prejudice to one of the parties to the proceedings. As observed earlier, the subject matter involved in all the three suits is one and the same. It is a settled principle of law that a person, who is having interest or semblance of interest in the subject matter of the suit, is entitled to come on record. One of the objects of Order I Rule 10 C.P.C. is to avoid multiplicity of litigation. The trial Court dismissed the petition on the sole ground that the petitioners can agitate their rights by filing a separate suit. Filing of a separate suit by the petitioners against respondent Nos.1 and 2 would lead to multiplicity of litigation. If the trial Court is allowed to pass separate judgments, it may lead to conflicting judgments. In order to avoid multiplicity of litigation as well as conflicting judgments, this Court is of the considered view that it is a fit case to allow the revision petition. Even if the petition is allowed, the same may not cause any prejudice to the vested rights, if any, of respondent Nos.1 and 2.

10. In the result, the Civil Revision Petition is allowed setting aside the order dated 29.08.2017 passed in I.A.No.169 of 2015 in O.S.No.76 of 2009 on the file of the Court of the Junior Civil Judge, Nandalur. Consequently, I.A.No.169 of 2015 is allowed permitting the petitioners to come on record as defendant Nos.4 to 6. There shall be no order as to costs.

11. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 26.06.2018
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