

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.5912 OF 2017

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, questioning the order passed by the III Senior Civil Judge, City Civil Court at Secunderabad in I.A.No.828 of 2015 in O.S.No.249 of 2015 dated 23.08.2017, allowing the application filed under Order I Rule 10(2) C.P.C, impleading the proposed third party-Jamil-A-Hussain.

The petitioner is the plaintiff and the second respondent-Anil Rao was the sole defendant in the original suit. The proposed third party-Jamil-A-Hussain filed an application under Order I Rule 10(2) C.P.C to implead him as a party defendant in the said suit, as there is a title dispute between the parties to the original suit, as the presence of proposed third party-Jamil-A-Hussain is necessary for adjudication of the dispute effectively and therefore, sought his impleadment as second defendant in the suit.

The petitioner filed counter denying material allegations, while *inter alia* contending that, proposed third party-Jamil-A-Hussain is neither proper nor necessary party to the suit, since the suit is only for injunction simplicitor and that the scope of suit cannot be enlarged to adjudicate the title in a suit for bare injunction and prayed for dismissal of the petitioner. However, the Trial Court, upon hearing argument of both the counsel, made a clear observation that there is a title dispute, since both the parties are claiming title through the proposed third party-Jamil-A-

Hussain, either as General Power of Attorney or original owner and also observed that, in a suit for permanent injunction, question of title of the plaintiff and validity of the title need not be examined and concluded that the presence of proposed third party-Jamil-A-Hussain is necessary and proper to examine the title of the plaintiff as incidental question in the main suit and allowed I.A.No.828 of 2015.

Aggrieved by the order in I.A.No.828 of 2015, the present civil revision petition is filed, raising several contentions, mainly contending that the question of title cannot be gone into in a suit for injunction when the petitioner is not claiming any injunctive relief, alleging that the third party has interfered with the possession and enjoyment, the third party is not proper and necessary party and impleading proposed third party-Jamil-A-Hussain is contrary to the law and that too, he has no interest in the property. But, the Court below did not consider the objection and committed an error in allowing the petition and prayed to set-aside the same.

Learned counsel for the petitioner Sri K.K. Waghay reiterated the contentions raised in the petition, while drawing attention of this Court to several paragraphs regarding the necessity of impleading the proposed third party-Jamil-A-Hussain in a suit filed for bare injunction, while contending that those findings are irrelevant and the third party is neither proper nor necessary party in a suit filed for bare injunction and prayed to set-aside the order.

Notice was served on the respondents as well as, on the advocate on record vide U.S.R.No.7180 of 2017, but none appeared.

Considering the contentions of the learned counsel for the petitioner, the point that arise for consideration is **“Whether the proposed third party-Jamil-A-Hussain is proper and necessary party in a suit for injunction simplicitor. If so, whether the order passed by the Court below in I.A.No.828 of 2015 in O.S.No.249 of 2015 dated 23.08.2017 be sustained under law?”**

P O I N T:

Admittedly, the suit is filed for injunction simplicitor, on the ground that the defendant-Anil Rao infringed or invaded the right of the petitioner from enjoyment of the suit schedule property. But, the proposed third party-Jamil-A-Hussain filed an application under Order I Rule 10(2) C.P.C seeking impleadment as second defendant to protect his interest in the property.

According to Order I Rule 10(2) C.P.C, the Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

The word 'proper or necessary party' is not defined anywhere. But, Order I Rule 10 empowers the Court to implead any person as a party at any stage of the proceedings, if the Court finds that the person/third party whose presence before the Court is necessary to decide the real controversy between the parties, depending upon the nature of the suit. Such power can be exercised at any stage of the proceedings, including at the stage of trial. But, discretion is conferred on the Court to deal with such suggestion which may result to prejudicing the interest of affected party, if any impleaded in the suit and whether the impleadment of the said party is necessary and vital for proper adjudication of the suit are also the aspects to be looked into while deciding an application under Order I Rule 10(2) C.P.C, to avoid multiplicity of litigations and also conflicting decisions being passed in different suits, which will be safeguarded as a result of allowing necessary parties to be impleaded in a suit.

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

¹ 2010(7) SCC 417

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”.

It is clear from the law declared by the Apex Court that only proper and necessary parties are to be impleaded as parties to the suit.

In the present case, the suit is filed for bare injunction, making a specific allegation that the defendant-Anil Rao attempted to infringe or invade the legal right of the petitioner to enjoy the suit schedule property. Therefore, the cause of action i.e. right to claim injunctive relief is only against the original defendant-Anil Rao, but not against this petitioner. Apart from that, in a suit for bare injunction, the title to the suit is irrelevant and the Court cannot go into the title of the parties and record a finding, except incidentally to decide whether the possession of the plaintiff is lawful or not. But, though the Trial Court observed in paragraph 7 of the order that a serious question of title cannot be decided in a suit for injunction simplicitor, finally concluded that, proposed

third party-Jamil-A-Hussain is necessary and proper party to examine the title of plaintiff incidentally in a suit for injunction simplicitor. But, the finding of the Court below is erroneous, for the reason that, the plaintiff is required to prove his possession and enjoyment as on the date of filing suit, but not his title. The Court is not required to record any finding on the title, since it is beyond the scope of relief in a suit for injunction simplicitor.

In **Kaneez Fathima v. Samru Sulthana**², the learned Single Judge of this Court observed that, in a suit for bare injunction, title cannot be gone into, except for limited purpose of deciding the lawful possession and held as follows:

“The Court was under impression that, unless a plaintiff in a suit for perpetual injunction proves his title, possession even if established, cannot be recognized. This is totally opposed to the settled principles of law. **Basically, the finding, as to the possession, must be recorded, in a suit of this nature, and the verification of title, in the limited sense, must be undertaken, if necessity arises**.....”

(emphasis supplied)

Even according to the allegations made in the order passed by the Court below, the plaintiff and the original defendant-Anil Rao are claiming that they purchased the property from the same person i.e. proposed third party-Jamil-A-Hussain. But, the original vendor of the plaintiff and alleged vendor of the defendant-Anil Rao wanted to come on record, as defendant by filing an application under Order I Rule 10(2) C.P.C. When proposed third party-Jamil-A-Hussain sold the property either to the plaintiff or defendant, he ceased to be the owner of the property and he had no directed interest in the property in question.

² 2008 (3) ALT 538

In **Basant Kumar Soni v. Mukund Das Soni**³, learned Single Judge of this Court held that the proposed party must show semblance of right and interest in the subject matter or a direct interest in the subject matter or a direct interest in the subject matter of the suit. The primary object of Order I Rule 10(2) C.P.C is to bring before the Court at one and the same time all the persons interested in the dispute so that all the controversies in the suit may be finally determined once for all in the presence of all parties without delay, inconvenience and expenses of the several actions, trials and inconclusive adjudication.

Here in this case, for accepting the case of the proposed third party-Jamil-A-Hussain, he ceased to be the owner, either due to sale of the property to the petitioner or the original defendant-Anil Rao. Therefore, proposed third party-Jamil-A-Hussain has no direct interest in the subject matter of the suit. Consequently, proposed third party-Jamil-A-Hussain is not entitled to come on record as defendant in a suit for injunction simplicitor. But, the Trial Court did not look into the direct interest of the proposed third party-Jamil-A-Hussain, in the subject matter of the property and insisted to examine the title of the parties, though it is in dispute, as the suit is filed for injunction simplicitor and committed an error in allowing the petition filed under Order I Rule 10 C.P.C.

Therefore, the order passed by the III Senior Civil Judge, City Civil Court at Secunderabad in I.A.No.828 of 2015 in O.S.No.249

³ 2010 (4) ALT 790

of 2015 dated 23.08.2017 is not legally sustainable and the same is liable to be set-aside.

In the result, the civil revision petition is allowed, setting-aside the order in I.A.No.828 of 2015 in O.S.No.249 of 2015 dated 23.08.2017 passed by the III Senior Civil Judge, City Civil Court at Secunderabad.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:25.01.2018

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