

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO. 6511 OF 2017

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.121 of 2017 in I.A.No.287 of 2012 in O.S.No.115 of 2017 dated 18.09.2017 passed by the I Additional Chief Judge, City Civil Court at Secunderabad.

The petitioner claiming to be the legal heir of A. Sebastian filed I.A.No.121 of 2017 under Order I Rule 10 r/w Section 151 C.P.C, alleging that, he is the grandson of A. Sebastian, who is the owner and founder of St. Thomas Mission situated at Station Road, Secunderabad along with attached properties. The first respondent/plaintiff filed O.S.No.115 of 2017 for eviction and arrears of rents against the respondent/defendant from the suit schedule property and also filed I.A.No.287 of 2012 which is pending. Subsequently, the Church has been developed and to look after the welfare of the said Church, a Society by name St. Thomas (S.P.G) Tamil Church Society, Regd. No.2394/1991 was formed and the said society was formed without the consent and knowledge of the petitioner. It is alleged that the petitioner is the successor and grandson of founder namely Mr. A. Sebastian and after his death, the petitioner became the successor and proprietor of the said Church as per the Title Deed dated 28.05.1877 issued by the Cantonment Magistrate. It is further contended that, the respondent no.1/plaintiff filed O.S.No.115 of 2017 only with an

intention to misuse the properties and rent of the said Church and it is also collecting the rent from the several properties in the premises of Church land. Therefore, the petitioner is a proper and necessary party to the suit and sought to implead him as proposed respondent/defendant in the suit.

The respondent No.1/plaintiff filed counter denying material allegations, *inter alia*, contending that several Clergies served St. Thomas Tamil Cathedral Church since 1842 and the Rev.A. Sebastian is at Sl.No.5, who served as a Clergy and Rev.A. Sebastian was never the owner of the Mission. Thus, from the list of Clergy, Rev.A. Sebastian was found in Sl.No.5 which clearly concluded that he was only the clergy appointed to propagate the Gospel which is the main object of St. Thomas Mission. Therefore, on behalf of the St. Thomas Mission, he appeared before the Cantonment Magistrate and got registered the church and other properties in the name of St. Thomas Mission, for which the Cantonment Magistrate has issued a title certificate confirming the ownership title and possession of St. Thomas Mission in respect of the properties claimed under various title deed, which include church cemetery and school buildings. Therefore, the question of petitioner succeeding the property being the grandson of Rev.A. Sebastian, who is the alleged founder of the church does not arise and he has no right to be impleaded.

It is also further contended that the petitioner is not the grand son of Rev.A. Sebastian, but taking advantage of the surname as Sebastian, he intended to come on record, so as to claim compensation in the land acquisition proceedings before the

Civil Court in reference under Section 30 of the Land acquisition Act.

It is also contended that, any of the title deed disclosed that the property was given to another Clergy of St. Thomas Mission and thereby, the petitioner cannot claim any right over the property, as a grandson of Rev.A. Sebastian and requested to dismiss the petition.

The Trial Court upon hearing argument of both the counsel, dismissed the petition, holding that the property belongs to Church and Rev.A. Sebastian alleged grandfather of this petitioner was not the owner of the property and he has no absolute right title and ownership over the suit schedule property. Moreover, Rev.A. Sebastian served as Clergy in the Church and St. Thomas Mission and therefore, he cannot be treated as owner of the property and this petitioner being the alleged grandson is not entitled to come on record and dismissed the petition. Aggrieved by the order passed by the I Additional Chief Judge, City Civil Court at Secunderabad, the present civil revision petition is filed.

The main ground urged before this Court is that, the Trial Court did not consider the relationship between Rev.A. Sebastian and this petitioner and interest of Rev.A. Sebastian over the property. It is contended that, Rev.A. Sebastian was the founder of the church and when he was the founder, this petitioner succeeded the right of his grandfather. But, the Court below did not consider this aspect in proper perspective and prayed to set-aside the order in I.A.No.121 of 2017 in I.A.No.287 of 2012 in

O.S.No.115 of 2017 dated 18.09.2017 passed by the I Additional Chief Judge, City Civil Court at Secunderabad.

During hearing, learned counsel for the petitioner while reiterating the contentions, would draw attention of this Court to certain documents i.e. title deed issued by the Cantonment Magistrate, Secunderabad in favour of St. Thomas Mission, to establish that Rev.A. Sebastian is the owner of the property in dispute in the said suit. Basing on the title deed, learned counsel for the petitioner contended that, Rev.A. Sebastian was the owner and this petitioner is the grandson of Rev.A. Sebastian who succeeded the rights of Rev.A. Sebastian, thereby he is entitled to implead and requested to set-aside the order in I.A.No.121 of 2017 in I.A.No.287 of 2012 in O.S.No.115 of 2017 dated 18.09.2017 passed by the I Additional Chief Judge, City Civil Court at Secunderabad.

None appeared on behalf of the respondents, though notice was served on the respondent and proof of service was filed.

The petitioner claiming to be the grandson of Rev.A. Sebastian filed I.A.No.121 of 2017 under Order I Rule 10 r/w 151 C.P.C to come on record and protect the property. But, the basis to claim right over the property is the title deed issued by the Cantonment Magistrate, which reads as follows:

“Whereas, Rev.A. Sebastian, has produced before me good evidence that the St. Thomas Church general No. None hereinafter described is the acquired property of “Secunderabd St. Thomas’ Mission”. I hereby grant this Title Deed to certify the same and declare the said “Secunderabad St.Thomas Mission” and heirs after it to be the proprietor of the said Church and to enjoy all the rights and bear all the responsibilities of the proprietorship thereof until decided otherwise by competent authority.....”

On a bare reading of the first paragraph of the title deed, the title was conferred to St. Thomas Church, as Rev.A. Sebastian has produced good evidence, St. Thomas Church acquired the status of Secunderabad St. Thomas Mission and Rev.A. Sebastian to be the proprietor and his heirs of the said Church to enjoy all the rights and to bear all the responsibilities of the proprietorship.

According to Order I Rule 10(2) C.P.C, the Court may strike out or add parties. 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.

Thus, by exercising power under Order I Rule 10(2) C.P.C, if the Court finds that the third party is a proper or necessary party to the suit, either for effectively or complete adjudication of the suit before the Court, the Court may permit the parties to come on record, either on the application of third party or any of the parties to the proceedings.

Here, the third party wanted to come on record claiming direct interest through Rev.A. Sebastian, who produced the evidence before the Cantonment Magistrate and obtained a title deed in the name of Secunderabad St. Thomas Mission. When a

title deed was issued in the name of Secunderabad St.Thomas Mission, this petitioner claiming to be the legal heir of Rev.A. Sebastian, one of the Clergy of the Church is not entitled to come on record, as he has no direct interest in the property.

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 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".

¹ 2010(7) SCC 417

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 view of the judgment of the Apex Court, the petitioner is neither proper nor necessary party, since the dispute is with regard to eviction of the person in occupation i.e. Hindustan Petroleum Corporation Limited and even in the absence of the petition, the Court can decide the *lis* before it effectively and finally. Hence, I find that this petitioner is neither proper nor necessary party to the suit.

Learned counsel for the petitioner has further drawn attention of this Court to an unreported judgment of Madurai Bench of Madras High Court in **T. Muthu Balu v. The Inspector General of Registration, Chennai and another** [W.P (MD) No.58 of 2012 and M.P.No.1 of 2012 dated 24.02.2014]. But, this judgment is passed in a writ petition, where the Court discussed various provisions of Registration Act and analyzed the definition of 'family'. But, that is not a question before this Court to be decided. Therefore, this judgment has no relevance to the present dispute. 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.

In the result, the civil revision petition is dismissed, confirming the order in I.A.No.121 of 2017 in I.A.No.287 of 2012 in O.S.No.115 of 2017 dated 18.09.2017 passed by the I Additional Chief Judge, City Civil Court at Secunderabad.

However, it is made clear that the observations made hereinabove are limited for dismissal of this civil revision petition only.

Consequently, miscellaneous petitions pending if any, shall stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date: 25.10.2018

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