

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.7150 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed questioning the Order dt.31.08.2017 in I.A.No.431 of 2017 in O.S.No.1877 of 2017 on the file of VIII Junior Civil Judge, City Civil Court, Hyderabad, allowing an application filed under Order 1 Rule 10(2) CPC to implead respondent No.3 here/petitioner as Defendant No.3 in O.S.No.1877 of 2017.

Respondent No.3/ proposed party/petitioner filed an application under Order 1 Rule 10 (2) CPC claiming that she is the absolute owner and possessor of the premises bearing Municipal No.18-4-795/47 admeasuring 82.00 square yards situated at outside Aliyabad, Sultan Bagh, Rajanna Bowli, Falaknuma, Hyderabad, having purchased the same under registered Sale Deed bearing No.3552/2017, dt. 24.07.2017 from respondent No.2/D.2 and she is in peaceful possession and enjoyment of the same as absolute owner since the date of purchase. The petitioner herein/plaintiff filed a suit on false and baseless allegations in collusion with Defendant Nos. 1 and 2 to harass her with an evil desire and to knock away the property of respondent No.3 setting up a lease and therefore by obtaining interim injunction, the plaintiff and defendants wanted to grab the property belonging to the proposed party. Hence, she is proper and necessary party being a purchaser of the schedule property and prayed to implead her as defendant in the suit No.1877 of 2017.

The petitioner herein/plaintiff filed Counter denying the material allegations *inter alia* contending that he is in possession and enjoyment

of the schedule property as a lessee under respondent No.2, who is the owner of the property, and that he filed a suit for perpetual injunction restraining the respondents/defendants therein from interfering with his peaceful possession and enjoyment of the schedule property basing on the lease agreement dt. 29.10.2016 while claiming lawful possession from the date of lease and the suit was filed on 31.07.2017.

The trial Court, upon hearing both the counsel, passed the cryptic Order dt.31.08.2017, extracting the contentions of both parties, recorded the following findings:

“There are no merits in the counter affidavit and since the petitioner is purchaser of the suit under Registered Sale Deed, she is the proper party to the suit and accordingly, the petition is allowed to meet the ends of justice and to prevent abuse of process of law. To carry out the amendment and for filing neat copy, call on 04.09.2017”

Aggrieved by the Order dt. 31.08.2017 of the trial Court, the present revision is filed mainly on the ground that the petitioner herein is the *dominus litus* and he filed the suit against the person against whom he had grievance and he can choose the person against whom such relief can be claimed, which is in the nature of preventive relief, and therefore, the proposed party/3rd party cannot be allowed to come on record as defendant in the suit for perpetual injunction. But, the trial Court committed an error in passing such cryptic order and prayed to allow the petition setting aside the Order dt. 31.08.2017 passed by the trial Court.

Learned counsel for the petitioner herein while reiterating the contentions placed on record the following Judgments:

- i) *Mumbai International Airport Private Limited v. Regency Convention Centre and Hotels Private Limited and Others*¹; and

¹ (2010) 7 SCC 417

ii) *Ainala Kumar and others v Pulakanti Narsi Reddy and others*²,

and requested this Court to set aside the order passed by the trial Court by dismissing the petition filed under Order 1 Rule 10(2) CPC by the respondent No.3/3rd party.

Learned counsel for the respondent No.3 herein/petitioner before the trial Court supported the Order in all respects while contending that the plaintiff in collusion with respondent Nos. 1 and 2 herein filed the suit, who are not the contesting parties, and in the guise of interim injunction, he is trying to grab the schedule property, which is exclusively belonging to her, and therefore, the plaintiff cannot be allowed to abuse of process of law and grab the property of respondent No.3 by filing fictitious suit against respondent Nos. 1 and 2 and prayed to dismiss the petition confirming the Order passed by the trial Court.

Considering rival contentions and perusing the material on record, the point that arise for consideration is:

“Whether the proposed party/respondent No.3 herein is proper or necessary party to the suit for injunction simplicitor in O.S.No.1877 of 2017 pending on the file of VIII Junior Civil Judge, City Civil Court, Hyderabad?”

POINT: Admittedly, the petitioner/plaintiff filed the suit for injunction simplicitor against respondent Nos. 1 and 2 herein i.e., Mohd Imran and Mohd. Ilyas, alleging that he was inducted into the premises as tenant commencing from 01.11.2016 for a period 11 months and since then he is in occupation of the schedule property as a lawful tenant and during subsistence of the tenancy, respondent Nos. 1 and 2 herein, referred above, are trying to interfere with his peaceful possession

² 2008(3) ALD 686

and enjoyment of the schedule property and sought for perpetual injunction by filing the suit on 31.07.2017. Respondent No.3/proposed party claiming title to the schedule property by way of registered Sale Deed dt. 24.07.2017, which was executed six days prior to filing of the suit. But, in a suit for injunction, 3rd party cannot be allowed to come on record since the relief is against the person, who made an attempt to interfere with the peaceful possession and enjoyment of the schedule property.

Order 1 Rule 10 C.P.C deals with parties to the suit. It deals with necessity of bringing parties to the suit for proper and effectual adjudication of the matter in dispute. Order 1 Rule 10 of Code of Civil Procedure enables the court to add any person as a party at any stage of the proceedings, if the person whose presence before the court is necessary in order to enable the court effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision. It is well settled principle of law that basically, it is for the plaintiff in a suit to identify the parties against whom he has any grievance and to implead them as defendants in the suit filed for necessary relief. He cannot be compelled to face litigation with the persons against whom he has no grievance. Where, however, any third party is likely to suffer any grievance, on account of the outcome of the suit, he shall be entitled to get himself impleaded. The question as to whether any individual is a proper or necessary party to a suit, would depend upon the nature of relief claimed in the suit and the right or interest projected by the persons, who propose to get themselves impleaded. No hard and fast rule can be laid, that would cover a possible situation in this regard. *Dominos litus* is the person to whom a suit belongs. This also means master of a suit. The person has real interest

in the decision of a case. It is this person who will be affected by the decision in a case. This person derives benefits if the judgment is in his favour, or suffers the consequences of an adverse decision. Doctrine of "*Dominus litus*" is applied to one, who though not originally a party has made himself such, by intervention or otherwise, and has assumed the entire control and responsibility for one side and it is treated by the court as liable for costs and a person who is really and directly interested in the suit as a party. The principles governing the power of the court under Order 1, Rule 10 of C.P.C., are that as a rule the court should not add a person as a defendant in a suit when the plaintiff is opposed to such addition. The reason is that the plaintiff is the "*dominus litus*". He cannot be compelled to fight against a person against whom he does not wish to fight and against whom he does not claim any relief. The theory of *dominus litus* should not be over stretched in the matter of impleading of parties, because it is the duty of the court to ensure that if for deciding the real matter in dispute, a person is necessary party, the court can order such person to be impleaded. Merely because the plaintiff does not choose to implead a person is not sufficient for rejection of an application for being impleaded. The power of Court as per Order 1 Rule 10(2) C.P.C., are very wide and the powers of the court are equally extensive. Even without an application to be impleaded as a party, the Court may, at any stage of the proceedings order that the name of any party, 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 adjudicate upon and settle all the questions involved in the suit, be added. The word 'necessary' and 'proper parties' are not defined anywhere, except in the law referred supra. 'Necessary party' means a person in whose absence the relief claimed in the suit cannot be granted. In other words, it means that

for the grant of relief claimed in a suit, a person who ought to have joined must be added. Proper party means whose presence may be necessary with a view to fully adjudicate upon the matters involved in the suit.

The Apex Court in *Kasturi v Uyyamperumal and others*³, laid down certain guidelines to decide as to who is the proper and necessary party. In *Mahadeva Rice and Oil Mills v Chennimalai Gounder*⁴, *Antony Devaraj v Aralvaimozhi (kurusadi) Devasahayam Mount Oor and Thuya Viagula, Annai Church, rep. By the Trustee*⁵ and *Mumbai International Airport v Regency Convention Centre (1 supra)*, which the counsel for the petitioner herein relied on, laid down certain principles for impleadment of the petitioner in exercising power under Order 1 Rule 10 (2) CPC.

In earlier judgment in *Pazia Begum v Sahebzadi Anwar Begum and others*⁶, the Apex Court laid down seven guidelines to exercise power under Order 1 Rule 10 (2) CPC to implead the 3rd party either as plaintiff or defendant to the suit.

The law laid down in catena of judgments referred supra, to exercise power under Order 1 Rule 10 (2) CPC, the party must have direct interest and since it is a diversification from the rule of Doctrine of *dominos litus*.

The present suit was filed for injunction simplicitor against respondent Nos. 1 and 2 herein, who are the original owners from whom the plaintiff is claiming right and title to the schedule property. Therefore, the plaintiff is having direct interest in the schedule property, but without impleading him.

³ (2005) 6 SCC 733

⁴ AIR 1968 Mad. 287

⁵ 2004(2) CTC 183

⁶ AIR 1958 SC 886

The learned counsel for the petitioner has placed reliance in *Ainala Kumar 's case (2 supra)*, wherein this Court held as follows:

“It is well known that plaintiff is the dominus litis and cannot be asked to prosecute the case against person whom he is not willing to prosecute. It is for him to choose who the defendants in the suit would be, and so, no third party can compel him to fight the litigation against him when he does not want to do so. No doubt in certain cases Court can in spite of opposition by the plaintiff can direct impleadment of a party. In this case, it is not necessary because as rightly held by the trial Court, if the revision petitioners felt that their rights, if any, in the plaint schedule property due to respondent Nos. 1 to 3 filing the suit against their transferors are put to jeopardy, their remedy is to file a separate suit, but they cannot compel respondent Nos. 1 to 3 to fight litigation against them.”

The law laid down by the Courts in various judgments is not in quarrel. But, the Order of the trial Court is consisting of two lines and bereft of any reasoning. When the Order is not reasoned, i.e., not disclosing the actual reason for impleadment of a particular person, the Order cannot be sustained under law. What an Order shall contain normally is not specified anywhere but the order must be reasoned one since the judgment or order in its final shape usually contains in addition to formal parts:

“ (i) A preliminary or introductory part, showing the form of the application upon which it was made, the manner in which and the place at which, the writ or other originating process was served, the parties appearing any consent, waivers, undertakings or admissions given or made, so placed as to indicate whether they relate to the whole judgment or order or only part of it, and a reference to the evidence upon which the judgment or order is based; and

(ii) A substantive or mandatory part, containing the order made by the Court" as has been said in Halsbury's Laws of England (4th Edition, Volume 26 P. 260).

Thus, in view of the requirements of an order or judgment referred above, order pronounced on the bench shall contain the reasoning

since the judge speaks with authority by his judgment. The strength of a judgment lies in its reasoning and it should therefore be convincing. Clarity of exposition is always essential. Dignity, convincingness and clarity are exacting requirements but they are subservient to what, after all, is the main object of a judgment, which is not only to do but to seem to do justice. In addition to these cardinal qualities of a good judgment, there are the attributes of style, elegance and happy phrasing which are its embellishments. In the words of Former Chief Justice of the Supreme Court Sabyasachi Mukharji, the requirement of a good judgment is reason. Judgment is of value on the strength of its reasons. The weight of a judgment, its binding character or its persuasive character depends on the presentation and articulation of reasons. Reason, therefore, is the soul and spirit of a good judgment. Equity, justice and good conscience are the hallmarks of judging. One who seeks to rely only on principles of law, and looks only for the decided cases to support the reasons to be given in a case or acts with bias or emotions, loses rationality in deciding the cases. The blind or strict adherence to the principles of law sometimes carries away a judge and deviates from the objectivity of judging issues brought before him.

The Apex Court in *Joint Commissioner of Income Tax, Surat, Vs. Saheli Leasing and Industries Limited* (Civil Appeal No. 4278 of 2010) laid down the following A to G guidelines indicating what the judgment should contain:

- a) It should always be kept in mind that nothing should be written in the judgment/order, which may not be germane to the facts of the case; It should have a co-relation with the applicable law and facts. The ratio decidendi should be clearly spelt out from the judgment/order.
- b) After preparing the draft, it is necessary to go through the same to find out, if anything, essential to be mentioned, has escaped discussion."
- c) The ultimate finished judgment/order should have sustained chronology, regard being had to the concept that it has readable, continued interest and one does not feel like parting or leaving it in the

midway. To elaborate, it should have flow and perfect sequence of events, which would continue to generate interest in the reader.

d) Appropriate care should be taken not to load it with all legal knowledge on the subject as citation of too many judgments creates more confusion rather than clarity. The foremost requirement is that leading judgments should be mentioned and the evolution that has taken place ever since the same were pronounced and thereafter, latest judgment, in which all previous judgments have been considered, should be mentioned. While writing judgment, psychology of the reader has also to be borne in mind, for the perception on that score is imperative.

e) Language should not be rhetoric and should not reflect a contrived effort on the part of the author.

f) After arguments are concluded, an endeavour should be made to pronounce the judgment at the earliest and in any case not beyond a period of three months. Keeping it pending for long time, sends a wrong signal to the litigants and the society.

g) It should be avoided to give instances, which are likely to cause public agitation or to a particular society. Nothing should be reflected in the same which may hurt the feelings or emotions of any individual or society.

In view of the law laid down by the Courts consistently, the order must have reasoned and it shall contain the minimum requirement as stated above, but the trial Court did not record any reason for arriving such conclusion muchless sufficient reason. In the absence of any reason for arriving such conclusion, the Order cannot be sustained under law.

This Court in *M/s. Leela Enterprises, rep. by its Proprietor, K. Surender and another v. Smt Kamar Sultana @Kamar Hassan*⁷, held that the Judgment must contain reasons for arriving at any conclusion besides containing all other requirements as laid down by the Apex Court *Joint Commissioner of Income Tax, Surat, Vs. Saheli Leasing and Industries Limited (Civil Appeal No. 4278 of 2010)* referred above.

When the Order passed by the Court did not specify the requirements as aforesaid, the Order 31.08.2017 passed by the trial Court is unsustainable and consequently, it is liable to be set aside while remanding the matter to the trial Court to pass appropriate Orders

⁷ 2017 (5) ALT 75

afresh, keeping in view the law declared by this Court and Apex Court in *M/s. Leela Enterprises's and Leela Enterprises's case referred supra*.

Accordingly, this Civil Revision Petition is allowed setting aside the Order dt.31.08.2017 in I.A.No.431 of 2017 in O.S.No.1877 of 2017 on the file of VIII Junior Civil Judge, City Civil Court, Hyderabad, while remanding the matter to the trial Court to pass appropriate orders afresh, within a period of one month from the date of receipt of a copy of this Order.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 15-02-2018
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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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Dt. 15-02-2018

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