

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.357 of 2019

ORDER :

This Civil Revision Petition is filed by petitioner challenging the order dt.24.09.2018 passed in I.A.No.3 of 2018 passed in O.S.No.1162 of 2007 on the file of IV Additional Rent Controller, Hyderabad.

2. The petitioner herein is a third-party to the suit.
3. The said suit was filed by respondent nos.1 to 6 against respondent nos.7 to 31 for cancellation of a registered sale deed dt.20.08.1963 executed in favour of the defendants before the Sub-Registrar, Hyderabad.
4. The respondent nos.1 to 6 / plaintiffs contended in the suit that they have purchased the property which is subject matter of the suit under a registered sale deed being Document NO.2313 / 1962, dt.19.11.1962.
5. While the said suit is pending, the petitioner herein filed I.A.No.3 of 2018 disputing the title claimed by both the respondent nos.1 to 6 and respondent nos.7 to 31 and contending that he has title to the property which is part of the property belonging to the private estate of H.E.H. Nizam VII, and that he is the grand-son of H.E.H. Nizam VII; that the documents set-up by both the respondent nos.1 to 6 and 7 to 31 are fabricated and fraudulent documents created in

collusion with Revenue Officers with an intention to grab the said properties.

6. Counter-affidavit was filed by respondent nos.1 to 6 / plaintiffs, opposing the impleadment of petitioner. They contended that the petitioner is in no way concerned with the suit schedule property and the application for impleadment is not maintainable. It was also contended that the petitioner cannot seek declaration of title in a suit filed by original plaintiff, through whom respondent nos.1 to 6 are claiming, and cannot overcome the limitation period by doing so, and also cannot avoid payment of Court Fee in this manner. It was also stated that the petitioner had filed O.S.No.821 of 2017 before the X Additional Chief Judge, City Civil Court, Hyderabad for a perpetual injunction against all the respondents which is pending adjudication.

7. The respondent nos.7 to 10 / defendant nos.1 to 4 also filed an application opposing the impleadment of the petitioner.

8. Other respondent nos.11 to 31 did not file any counter.

9. By order dt.24.09.2018, the Court below dismissed the said I.A. after referring to provisions of Order I Rule 10(2) of Civil Procedure Code, 1908, and the contentions of the parties. The Court below observed that the petitioner did not file any documentary proof in support of his title and possession over the suit schedule property; that even according to the petitioner, H.E.H. Nizam VII had created a Trust of all his properties which is maintained in the Blue Book and

the suit property is also included therein; and if that is so, the said Trust would take care of the suit schedule property also, and the petitioner, who is only beneficiary of the Trust, cannot independently enforce his right over the same. It observed that if the property is of the Trust, then petitioner has to file a suit making the said Trust as a party. It thus held that the petitioner is not a necessary and proper party to the suit.

10. Assailing the same, the present Civil Revision Petition is filed.

11. The counsel for petitioner contended that the petitioner is a necessary party to the suit filed by respondent nos.1 to 6 by the original plaintiff / respondent nos.1 to 6 against respondent nos.7 to 31 since the property which is subject matter of the said suit belongs to him, and he has a share therein; and grave prejudice would be caused to petitioner, if he is not impleaded.

12. Admittedly, the suit in question is a suit filed by the plaintiff / respondent nos.1 to 6 for cancellation of a registered sale deed dt.20.08.1963 executed in favour of defendants in the suit in respect of the suit schedule property. Therefore, in the said suit primarily the Court would be concerned as to whether circumstances exist for cancellation of the said registered sale deed dt.20.08.1963. If the petitioner is allowed to be impleaded in such a suit setting up independent title in himself while disputing the title of both the plaintiffs and defendants therein, it would result in converting the said

suit into a suit for declaration of plaintiff's title and alter the basic nature of the suit itself. Without paying any Court Fee, petitioner cannot get himself impleaded in a suit for cancellation of a sale deed and get his title declared.

13. In Mumbai International Airport (P) Ltd. vs. Regency Convention Centre and Hotels (P) Ltd.¹, the Supreme Court has held that as a general rule plaintiff in a suit being *dominus litus* may chose the persons against whom he wishes to litigate and cannot be compelled to pursue a person against whom he does not seek any relief. It mentioned that the Court has no doubt got the power to add any other party, if he is found to be a necessary or proper party, and that a necessary party is a person who ought to have been joined as a party and in whose absence no effective decree can be passed at all by the Court; while a proper party is a party, though not a necessary party, is a person whose presence would enable the Court to completely, effectively, adequately adjudicate upon all matters of dispute in the suit, though he need not be a person in favour of or against whom a decree is to be made.

14. Applying this test, I am of the opinion that it is possible for the Court below to pass an effective decree in the suit even in the absence of the petitioner and so he cannot claim to be a necessary party.

¹ (2010) 7 S.C.C. 417

15. In Vidur Impex and Traders Pvt. Ltd. and others vs. Tosh Apartments Pvt. Ltd. and others², the following principles have been laid down in para no.36, viz.,

“36. Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are :

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.

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.

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.

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.

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.

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.”

² (2012) 8 S.C.C. Pg.28

16. In view of the fact that impleadment of petitioner would convert the suit for cancellation of the sale deed into a suit for declaration of title and totally alter the basic nature of the suit, and since an effective decree can still be passed in the suit O.S.No.1162 of 2007 even if the petitioner is not a party therein, I do not see any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

17. However, liberty is granted to petitioner to avail appropriate separate remedy in an appropriate forum if his interests in the property are apprehended by him to be affected in any manner.

18. Accordingly, the Civil Revision Petition fails and is dismissed. No order as to costs.

19. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 20.02.2019

Ndr/*