

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**CIVIL REVISION PETITION No.420 OF 2019**

**ORDER:**

This Revision is filed under Article 227 of the Constitution of India challenging the order dated 31.12.2018 in I.A.No.56 of 2017 in O.S.No.3241 of 2016 of the IV Junior Civil Judge, City Civil Court, Hyderabad.

2. Petitioner is the plaintiff in the said suit.

3. She filed the said suit against the second respondent for a perpetual injunction restraining the second respondent from interfering with the alleged possession of the petitioner or demolition of the suit schedule property or any part thereof and for costs.

4. It is contended in the plaint by the petitioner that permission was obtained to construct Stilt + 3 upper floors on 12.10.2010 by the petitioner in the said property and construction was commenced after informing the second respondent, but the officials of the second respondent were interfering with her possession and also threatened to demolish the suit schedule property on 07.12.2016 when the petitioner was proceeding to complete certain internal works such as plastering, flooring and colouring in the suit schedule premises. It is also alleged that the second respondent did not follow the procedure prescribed under the GHMC Act, 1955 and did not serve any notice on the petitioner.

5. The first respondent filed I.A.No.56/2017 under Order I Rule 10 of the Code of Civil Procedure seeking impleadment in the said suit alleging that she is the owner and possessor of the flat bearing No.301 in 3<sup>rd</sup> floor of the suit schedule property having purchased the same under registered sale deed dated 08.10.2012 from the petitioner; that the petitioner was proceeding with illegal and unauthorized construction on the terrace of the third floor without obtaining any permission and by causing damage to the flats in the third floor and other floors. She further alleged that due to illegal construction being carried out by the petitioner, cracks developed in the flats and there was damage caused to the first respondent's flat also. It is also alleged that the petitioner failed to complete erection of doors and balconies and was illegally doing mobile business in a shop in stilt floor also. It is further stated that she also filed O.S.N.89/2017 against the petitioner for perpetual injunction restraining her from proceeding with illegal construction, then she came to know that the petitioner obtained interim injunction order against the second respondent by suppressing the material facts and by influencing the officials of second respondent in the instant suit. It is also alleged that in the night time of 17.01.2017, petitioner brought readymade concrete mixture to lay roof and when the first respondent resisted the same, the petitioner, her husband, their associates and anti-social elements forcibly laid roof at 5.00 a.m. on 18.01.2017. It is also stated that the husband of the first respondent was kept in the Police custody till 5.00 p.m. on 18.01.2017 at the instance of the petitioner, and the Police have also supported the petitioner in laying of the roof. It is therefore stated that she was an affected

party and thus a necessary and proper party to the suit and she has to be impleaded as second defendant in the suit.

6. Counter affidavit was filed by the petitioner opposing the impleadment of the first respondent. She denied the allegations made by the first respondent and contended that the first respondent had no right to raise objection to the construction in the upper floors in the suit schedule property, since the first respondent is owner of only one apartment and she has no right in other floors of the complex. It was also alleged that the husband of the first respondent tried to extort illegally money from the petitioner and a Police complaint was also lodged in F.I.R. No.11/2017. Petitioner further contended that the first respondent initially filed O.S.No.89/2017 against the petitioner and has later withdrawn the same and then filed O.S.No.1440/2017 against the petitioner in the same Court and so the first respondent did not approach the Court with clean hands. It is contended that the first respondent agreed and accepted in the registered sale deed executed by the petitioner in favour of the first respondent that she did not have any objection for raising further floors in the complex. It is alleged that as per G.O.Ms.No.168 dated 07.04.2012 petitioner is entitled to construct complex with a height of 15 meters above the stilt i.e. stilt + 5 floors, but in 2009, construction permission was granted only for stilt + 3 upper floors and no sanction was sought then for additional floors. It is also stated that application was made on-line for sanction of additional floors vide file No.1/C4/00889/2017 and the first respondent cannot stop the construction.

7. By order dated 31.12.2018 the Court below allowed the said application for impleadment. After considering the contentions of both sides, it observed that the second respondent-GHMC is not contesting the suit; the first respondent is apprehending that her property would get damaged if the petitioner is permitted to proceed with construction; the first respondent is thus interested in the out come of the suit to protect her rights and therefore she ought to be impleaded.

8. Challenging the same, the present revision is filed.

9. Counsel for the petitioner contended that the Court below erred in allowing the implead application filed by the first respondent and that the first respondent is neither a necessary nor proper party to the suit. He also contended that if the first respondent is interested, she can have her suit O.S.No.1440/2017 clubbed with O.S.No.3241/2016, but she cannot get impleaded in O.S.No.3241/2016 filed by the petitioner for injunction against the second respondent. He also placed reliance on the decision of the Supreme Court in ***Mumbai International Airport Pvt. Ltd. vs. Regency Convention Centre & Hotels Pvt. Ltd. & others***<sup>1</sup>.

10. From the facts narrated above, it is apparent that though the suit is filed in 2016, the second respondent-GHMC, has not even filed a written statement in the suit and the petitioner had admittedly obtained a temporary injunction against the second respondent in I.A.No.578/2016 and is proceeding to make construction. The said construction is being made by the petitioner in the terrace on the third floor and above in the same

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<sup>1</sup> 2010 (7) SCC 417

premises where the first respondent is residing in flat No.301 in the third floor.

11. It is the contention of the first respondent that her apartment is getting damaged by the construction being carried out by the petitioner. Merely because the first respondent had filed O.S.No.1440/2017 against the petitioner, that is no reason to prevent the first respondent from getting impleaded in O.S.No.3241/2016. As rightly observed by the Court below, the first respondent is interested in protecting her rights in the subject property and is also interested in the outcome of the suit, because she was questioning the right of the petitioner in making construction and contending that it is an illegal and unauthorized construction by deviating from the sanctioned plan.

12. In ***Mumbai International Airport Pvt. Ltd. (supra)***, the Supreme Court laid down the following principles for impleadment of the parties:

*“ 12.1) If a plaintiff makes an application for impleading a person as a defendant on the ground that he is a necessary party, the court may implead him having regard to the provisions of Rules 9 and 10 (2) of Order 1. If the claim against such a person is barred by limitation, it may refuse to add him as a party and even dismiss the suit for non-joinder of a necessary party.*

*12.2) If the owner of a tenanted property enters into an agreement for sale of such property without physical possession, in a suit for specific performance by the purchaser, the tenant would not be a necessary party. But if the suit for specific performance is filed with an additional prayer for delivery of physical possession from the tenant in possession, then the tenant will be a necessary party in so far as the prayer for actual possession.*

12.3) *If a person makes an application for being impleaded contending that he is a necessary party, and if the court finds that he is a necessary party, it can implead him. If the plaintiff opposes such impleadment, then instead of impleading such a party, who is found to be a necessary party, the court may proceed to dismiss the suit by holding that the applicant was a necessary party and in his absence the plaintiff was not entitled to any relief in the suit.*

12.4) *If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bonafides etc., the court will normally implead him, if he is found to be a proper party. On the other hand, if a non-party makes an application seeking impleadment as a proper party and court finds him to be a proper party, the court may direct his addition as a defendant; but if the court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit; or the court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms. ....”*

13. In my considered opinion, the first petitioner is a necessary party to the suit and would be affected by the result in the suit filed by the petitioner against the second respondent.

14. Therefore, I find no error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India. Accordingly, the revision fails and is dismissed. No order as to costs.

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

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**Justice M.S.Ramachandra Rao**

13<sup>th</sup> March, 2019.

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