

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.5364 of 2009

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.25.06.2009 passed in Interlocutory Application No.3883 of 2007 in Original Suit No.52 of 2007 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad.

2. The petitioner herein is plaintiff in the above suit.
3. According to plaint, the 1st respondent is the President of a Society by name, Al Markaz-ul-Islami (**for short, ‘the Society’**), New Delhi, and having its branch office in Hyderabad.
4. It is the allegation of petitioner in the plaint that the Society at New Delhi purchased the suit schedule property under a registered sale deed in the year 1993; that 1st respondent assured petitioner that the Society is authorized to sell this property under Clause 22(ii) of its bye-laws; that 1st respondent received part of the sale consideration; that 1st respondent did not complete the transaction; and therefore, the suit was filed after giving a legal notice.
5. Thereafter, Written Statement was filed by 1st respondent opposing grant of relief to petitioner.
6. The petitioner then filed Interlocutory Application No.3883 of 2007 under Order 1 Rule 10 of Civil Procedure Code, 1908 to implead

the said Society, having its Branch at Hyderabad, as a party in the suit, alleging that by inadvertence the said branch at Hyderabad had not been made a party in the suit though it is the owner of the suit schedule property.

7. The 1st respondent opposed the said application and contended that there was no contract or any assurance for transfer of the suit schedule property belonging to the proposed party in favour of petitioner. He also denied that there was any agreement between the proposed party and petitioner for alienation of the suit schedule property. He also alleged that the proposed party is not a necessary party. According to him, there was no specific allegation against the proposed party in the plaint.

8. By order dt.25.06.2009, the Court below dismissed the said application stating that the suit for specific performance is filed against 1st respondent basing on an oral contract, that 1st respondent is opposing the impleadment of the proposed party, and there is no contract between the proposed party and petitioner.

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

10. The counsel for petitioner contended that while deciding whether or not to implead the 2nd respondent as 2nd defendant in the suit, the Court below could not have gone into the question whether there was a contract at all between 2nd respondent and petitioner, and merely because 1st respondent opposed the impleadment of 2nd

respondent in the suit, the Court cannot simply reject the application for impleadment. He also referred to the pleadings in the plaint which specifically referred to 2nd respondent at various places, and in particular, in para nos.4, 7 and 13, in support of his pleading that the property which is subject matter of the suit belongs to the proposed party, and not 1st respondent.

11. The counsel for 1st respondent refuted the said contentions and supported the order passed by the Court below. He contended that there is only an oral contract alleged by petitioner for sale of the property, but he did not dispute the specific pleadings in the plaint about the ownership of the suit schedule property being with the proposed party, and 1st respondent being the President of the main Branch of the proposed party-Society at New Delhi.

12. In my considered opinion, the non-impleadment of the proposed party was only on account of inadvertence, and the pleadings in the plaint specifically point to the fact that the property in the suit is owned by the proposed party, and that the 1st respondent is only representing the proposed party in the transaction alleged by petitioner for sale of the suit schedule property.

13. The Court below could not have gone into the merits of the claim of petitioner in the suit while deciding whether or not to implead the 2nd respondent as a party in the suit.

14. Accordingly, the Civil Revision Petition is allowed. The order dt.25.06.2009 passed in Interlocutory Application No.3883 of 2007 in Original Suit No.52 of 2007 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad is set aside, and the said I.A. is allowed. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 12.07.2019

Ndr/*

