

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.2253 of 2018

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.24.01.2018 passed in Interlocutory Application No.528 of 2017 in Original Suit No.148 of 2015 on the file of the V Senior Civil Judge, City Civil Court, at Hyderabad.

2. The petitioner herein is third-party to the said suit.
3. The said suit was filed by 1st respondent / plaintiff herein against 2nd respondent / defendant for eviction of 2nd respondent, recovery of arrears of rent and *mesne* profits, contending that the 1st respondent is the owner of the suit schedule property, and 2nd respondent was a tenant inducted by him on 01.08.2011. It is further contended that through a notice issued on 21.12.2013, the 1st respondent terminated the tenancy of 2nd respondent invoking Section 106 of the Transfer of Property Act, and in spite of the same, the 2nd respondent is squatting on the property, and so he should be evicted therefrom.
4. The petitioner herein filed Interlocutory Application No.528 of 2017 invoking Order I Rule 10 of Civil Procedure Code, 1908 contending that, in fact, he is the tenant in occupation of the suit

schedule *Mulgi*, and that 2nd respondent and 1st respondent have colluded together and are trying to obtain a decree by playing fraud on petitioner, and he is a necessary and property party to the suit.

5. Counter-affidavit was filed by 1st respondent contending that petitioner is a stranger to him, and there is no privity of contract between himself and petitioner with regard to the schedule property. He denied that petitioner is a tenant of the suit schedule property. He contended that petitioner has been set up by one Hariram Agarwal to harass him.

6. By order dt.24.01.2018, the Court below dismissed the said application observing that in order to prove relationship of tenant and landlord between petitioner and 1st respondent, no material is placed by petitioner other than plaint in Original Suit No.1435 of 2017; that an injunction warrant was passed in Interlocutory Application No.244 of 2017 in Original Suit No.1435 of 2017 in the said suit filed by petitioner against 1st respondent; that when the 1st respondent was denying the existence of relationship of landlord and tenant between him and petitioner, and is unwilling to implead the petitioner, the 1st respondent cannot be compelled to implead the petitioner and to fight litigation against him. It held that since he is *dominus litis* in the litigation, it is for him to choose his opponent, that since petitioner had already filed Original Suit No.1435 of 2017 before the X Junior Civil Judge, City Civil Court, Hyderabad, he can get adjudicated his

claim there in respect of the property which is subject-matter of the said suit, and he cannot be impleaded as a party in the instant suit.

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

8. The counsel for petitioner contended that petitioner is a necessary and proper party to the suit and he is, in fact, a tenant of 1st respondent and not 2nd respondent. He also pleaded that in Original Suit No.1435 of 2017 filed by petitioner against 1st respondent he had only sought to protect his possession till he is dispossessed by due process of law, and the Court below is not correct in relying on the said fact for dismissing the implead application.

9. Admittedly, the 1st respondent filed the suit against 2nd respondent seeking his eviction, and contending that 2nd respondent is his tenant in respect of the Schedule property.

10. The petitioner admittedly did not file any document to prove that there is any landlord and tenant relationship between himself and 1st respondent in the Court below. The 1st respondent had taken a plea that petitioner had been set-up by one Hariram Agarwal to harass him.

11. The apprehension of petitioner that petitioner would be evicted in the event Original Suit No.148 of 2015 is decreed against 2nd respondent is only an apprehension because the petitioner has remedies under Order XXI Rule 97 & 99 of Civil Procedure Code, 1908 to resist execution in the event the decree in Original Suit No.148 of 2015 is sought to be executed against him when he is not a

party to it. The 1st respondent being the *dominus litis* is entitled to select his opponent, and he cannot be compelled to litigate against petitioner when he has disputed the existence of relationship of landlord and tenant between himself and petitioner.

12. I, therefore, do not find 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.

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

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 15.07.2019

Ndr/*