

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.110 OF 2015

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order, dated 12.12.2014, in IA.No.195 of 2014 in OS.No.1824 of 2013 of the VII Junior Civil Judge, City Civil Court, Hyderabad.

2. Petitioner herein is the plaintiff in the suit.

3. He filed the said suit against respondents 2 & 3 for a perpetual injunction restraining the respondents 2 & 3 from interfering with his alleged possession and enjoyment of the plaint schedule property.

4. The plaint schedule property is premises bearing Municipal No.1-3-898 to 900, Khamuni Kantha, Old Hanuman Temple, Kavadiguda, Gandhinagar, Hyderabad, within specified boundaries.

5. According to the petitioner, the respondents are owners of the plaint schedule property; father of the petitioner was inducted as a tenant therein; that later he expired and during the life time of his father; and thereafter also rents were being paid to the ancestors of the defendants 2 & 3 by name Annam Mankaiah. He contended that thereafter the legal heirs of Annam Mankaiah did not demand or collect any amount from him; that he has been residing in the suit schedule property in his own right; that on 20.09.2013 some unknown persons asked him to vacate the suit schedule property within three days stating that they have come

at the instructions of respondents 2 & 3, that they are contemplating to sell the suit schedule property to third parties, and would forcibly evict them, if they did not hand over vacant possession to respondents 2 & 3.

6. The 1st respondent herein then filed IA.No.195 of 2014 under Order I Rule 10(2) of Code of Civil Procedure, 1908 (for short, 'CPC'), stating that his father was also a tenant of a portion of premises in House bearing No.1-3-898 & 899 from its original owners on rent in 1965, that the tenancy between his father and the owners was an oral tenancy and rents were being paid to the landlords. He contended that after 2006, he was paying rents to respondents 2 & 3 and in June, 2013, respondents 2 & 3 had informed him that they would sell H.No.1-3-897 to 900 to third parties.

7. He also contended that part of the premises bearing H.No.1-3-989 to 899 had collapsed due to heavy rains, that it is not fit for habitation and his family had moved out to better accommodation, but they have left some household articles in the said portion, for which they were paying rents to respondents 2 & 3 till June, 2013, and later they were paying rents to one A.Shiva Shanker.

8. He contended that he came to know that the petitioner had filed the suit OS.No.1824 of 2013 against respondents 2 & 3 for perpetual injunction, and since he was also one of the tenants of the property bearing H.No.1-3-897 to 900 along with the petitioner and other tenants, he should be impleaded in the suit in the capacity of a co-tenant.

9. Counter affidavit was filed by the petitioner opposing the impleadment of the 1st respondent. It was pointed out that the 1st respondent did not file any documents to show that his father had obtained a portion of the premises bearing H.No.1-3-898 & 899 on rent from the owners in 1965 nor were there any documents filed showing payment of rents. He contended that the rental receipts filed by the 1st respondent along with the IA pertain to the period 2007 onwards and are concocted documents.

10. It is alleged that the 1st respondent is colluding with respondents 2 & 3 and was set up by them; and that once the 1st respondent has asserted that after a portion of the property had collapsed, his family moved outside the premises for better accommodation, that itself is sufficient to reject his application for impleadment.

11. He further contended that he is the author of the plaint in the suit, which was filed for injunction simpliciter, and the 1st respondent, who has no direct interest in the subject matter of the suit cannot be permitted to be impleaded and has to work out his remedies elsewhere.

12. By order, dated 12.12.2014, the Court below allowed the said IA.No.195 of 2014.

13. After referring to the contentions of the parties, the Court below held that on perusal of the pleadings, the suit is found to be one for permanent injunction and that the title over the property is in dispute, and that in such a case, it is the duty of the 1st respondent to bring all necessary parties, who raised the dispute

with regard to the title over the property on record to avoid multiplicity of proceedings. Though it acknowledged that in a suit for injunction, title can be gone into only incidentally, it observed that since the 1st respondent filed payment receipts Exs.P-1 to P-11 showing that he paid rents to the plaint schedule property to the respondents 2 & 3 and others, which issue is to be decided in the main suit, he is still to be taken as a proper and necessary party though he has moved out of the schedule property since some of his household articles are still allegedly in it. It relied on the judgment of the Supreme Court in **Mumbai International Airport Pvt. Ltd. v. Regency Convention Centre & Hotels Pvt. Ltd. and others**¹ (1 supra).

14. Assailing the same, this Revision is filed.

15. Counsel for petitioner contended that the Court below could not have impleaded the 1st respondent as a party in the suit merely because the 1st respondent claimed to be a co-tenant when there is not even an averment in the implead application that there is any apprehension in the mind of the 1st respondent that he would be affected if the suit is decreed. He also contended that when the 1st respondent himself contended that he had moved out of the premises bearing H.No.1-3-898 & 899 when portion of it had collapsed and it was not fit for habitation, merely because allegedly some household articles were left in the said portion, the 1st respondent cannot claim a right to get impleaded in the suit. He contended that the petitioner is the *dominus litis* and he cannot be condemned to litigate against the 1st respondent against whom he

¹ 2010 (5) ALD 24 (SC)

does not seek any relief. He placed reliance on the judgments in **Kanaklata Das and others v. Naba Kumar Das and others**² and **K.Madhavilatha and others v. C.P. Rajendra Naidu and others**³.

16. Counsel for 1st respondent on the other hand supported the order passed by the Court below and placed reliance on the judgment in **Mumbai International Airport Pvt. Ltd.** (1 supra). He also contended that the 1st respondent would be seriously prejudiced if the suit is decreed in favour of the petitioner, since the suit schedule property includes the premises in which the 1st respondent was also a tenant, and where he has left some household articles. He contended that even if he is not a necessary party, he is a proper party and his presence is required to enable the Court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit though he is not a person against whom a decree can be passed.

17. I have noted the contentions of the parties.

17A. From the facts narrated above, it is clear that the petitioner filed the suit against respondents 2 & 3 claiming to have acquired title by adverse possession and alleging that he is in possession of the suit schedule property, but respondents 2 & 3 were threatening to dispossess him therefrom highhandedly. Therefore, the grievance of the petitioner is only against respondents 2 & 3.

18. The 1st respondent claims to be a tenant of a portion of the premises which forms part of the plaint schedule property. But nowhere in the implead application did the 1st respondent say that

² (2018) 2 Supreme Court Cases 352

³ 2012 (3) ALD 128

any order passed in the suit would adversely affect his interest. His only contention is that he is also a co-tenant of the petitioner and therefore he is entitled to be impleaded.

19. In my considered opinion, when the petitioner has no grievance against the 1st respondent, and the petitioner had in fact alleged collusion between 1st respondent and respondents 2 & 3 and has even denied the occupation by the 1st respondent of a portion of the suit schedule property, the 1st respondent cannot seek impleadment in the suit. More so when even according to the 1st respondent, he is not in actual physical possession of any portion of the suit schedule property though some household articles of his are alleged to be in a portion of the suit schedule property.

20. Merely because some household articles of his are alleged to be in a portion of the suit schedule property, if the 1st respondent were to be impleaded in the suit, then it would result in converting the suit for perpetual injunction into a suit to decide the alleged possession and tenancy of the 1st respondent and change the total nature of the suit.

21. In **Vidur Impex and Traders Pvt. Ltd. and others v. Tosh Apartments Pvt. Ltd. and others**⁴ as well as in **Mumbai International Airport Pvt. Ltd.** (1 supra), the Supreme Court had held that the general rule in regard to impleadment of parties is that plaintiff in a suit, being *dominus litis*, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief; consequently a

⁴ (2012) 8 SCC 384

person, who is not a party, has no right to be impleaded against the wishes of the plaintiff; but this rule is subject to the provisions of Order I Rule 10(2) CPC, which provides for impleadment of proper or necessary parties; that under this provision, a Court is given the discretion to add as a party, any person who is found to be a necessary party or proper party. The Court explained that 'necessary party' is a person, who ought to have joined as a party and in whose absence no effective decree could be passed at all by the Court; while a 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the Court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of all or against whom a decree is to be made. It further explained that two tests are to be satisfied for determining the question as to who is the necessary party (a) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; and (b) no effective decree can be passed in the absence of such party.

21A. Applying these twin tests, it cannot be said that the 1st respondent is a necessary party or a property party to the proceedings for the reason that there is no mention in the affidavit filed by the 1st respondent that he would be affected, if any order is passed in the suit.

22. More over, the 1st respondent himself has stated that he had vacated the portion in his accommodation and seeks impleadment only in his capacity as a co-tenant of the petitioner.

23. It is also important to note that any decree, which may be obtained by the petitioner against respondents 2 & 3 being a decree for injunction operates in *personem* only against respondents 2 & 3, and would not bind the 1st respondent.

24. However, if the 1st respondent's alleged possession is threatened by any of the other respondents or the petitioner, he is certainly entitled to institute substantive proceedings to protect his alleged possession and interest over the suit schedule property.

25. In my opinion, the Court below erred in exercising its jurisdiction to implead the 1st respondent as a 3rd defendant in the suit and holding that he is a proper and necessary party in the suit to avoid multiplicity of proceedings.

26. Therefore, the impugned order is set aside; the CRP No.110 of 2015 is allowed; and the order, dated 12.12.2014, in IA.No.195 of 2014 in OS.No.1824 of 2013 is dismissed. No costs.

27. Miscellaneous petitions, if any, pending in this civil revision petition shall stand closed.

M.S.RAMACHANDRA RAO, J

Date: 7th March, 2019

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