

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

**Civil Revision Petition No.7766 of 2018**

**ORDER :**

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.22.04.2018 passed in I.A.No.664 of 2017 in O.S.No.148 of 2009 on the file of Principal District Judge, Ranga Reddy District at L.B.Nagar, Hyderabad.

2. Though the suit appears to have been filed in the year 2007 as O.S.No.41 of 2007, it was later transferred to the Court of Principal District Judge, Ranga Reddy District, at L.B. Nagar, Hyderabad and re-numbered as O.S.No.148 of 2009.

3. The petitioner herein is third-party to the suit, though she is the wife of the plaintiff / 1<sup>st</sup> respondent in the above suit.

**CASE OF PLAINTIFF/RESPONDENT NO.1 IN THE SUIT**

4. The 1<sup>st</sup> respondent had filed the said suit against respondent nos.2 to 9 for partition and separate possession of several items of moveable and immoveable properties set out in Schedule 'B' to the plaint. It is his contention that himself and respondent nos.2 to 6 are brothers, that respondent nos.7 and 8 are the sons of the 2<sup>nd</sup> respondent and 9<sup>th</sup> respondent is the wife of the 2<sup>nd</sup> respondent; and that himself and the other respondents constituted undivided Hindu Joint Family; and that the said Hindu Joint Family had some farms and factories, agricultural lands, godowns, house and open sites

acquired out of the joint funds and income of the parties to the suit including the son of the 1<sup>st</sup> respondent.

5. According to him, there was a family settlement between 1<sup>st</sup> respondent and respondent nos.2 to 6 on 06.03.1995 agreeing to partition of the suit schedule properties and the 1<sup>st</sup> respondent was allotted 20% share in item nos.3 to 7; that he also allotted 45% of the properties mentioned in items 3-7 mentioned in para 2 of the plaint; 45% share in profits and property in Godown and Srinivasa Rice Mill, 25% in Par-Boiled rice Mill, and M/s Kwaliti Doors, M/s Anand Wood Crafts, 20% profits in M/s.Anand Agros Private Limited, and its sister concerns. He also contended that he was allotted 25% profits in construction works allotted by various Government Departments and private bodies in the names of himself and respondent nos.2 and 3.

6. According to him, thereafter there was a Memorandum of Understanding dt.14.02.1996 and the parties to the suit had settled their properties and enjoyed the same separately except the lands in godowns; that properties which were settled and are in enjoyment by the respective parties are described in Schedule 'A' in regard to which no relief is claimed, but the undivided agricultural lands, godowns, house property, etc., are fully described in the 'B' Schedule; that he is in joint possession of the undivided 'B' Schedule properties along with respondent nos.2 to 9, but the 2<sup>nd</sup> respondent is proclaiming these

lands as his own properties, and is otherwise committing breach of the said Memorandum of Understanding.

**CASE OF RESPONDENT NO.2/ DEFENDANT NO.1 IN WRITTEN STATEMENT**

7. Written statement was filed by the 2<sup>nd</sup> respondent opposing the suit claim. He contended that the properties are not joint family properties and none of them were acquired with the nucleus of the joint family, but the properties were acquired by 1<sup>st</sup> respondent and other respondents by their joint funds by floating various partnership firms and private limited companies.

8. Defendant no.s 8 and 9 also filed Written statement opposing the suit claim.

9. After issues were framed, trial commenced and evidence of the 1<sup>st</sup> respondent and other respondents who are supporting the 1<sup>st</sup> respondent was completed and the matter was coming up for evidence of the 2<sup>nd</sup> respondent.

**I.A.No.664 of 2017**

10. At that stage, the petitioner herein filed I.A.No.664 of 2017 under Order I Rule 10 of Civil Procedure Code to implead herself as 9<sup>th</sup> defendant in the above suit.

11. In the affidavit filed in support of the said application she stated that she came to know through her son that the 1<sup>st</sup> respondent, who is her husband, had filed the suit seeking relief of partition of the plaint

‘B’ Schedule properties which had been acquired jointly as well as by way of succession; one of the properties admeasuring Acs.9.00 gts. was in fact acquired and purchased in her name as well as in the name of 9<sup>th</sup> respondent and one Smt. K. Jamuna Rani from the nucleus of the joint family as well as with joint funds of the joint family members under Ex.A.32 (registered Sale Deed) bearing Document No.2735 of 1991; that another extent of Acs.3.20 gts. was purchased in her name under Ex.A.31 bearing Document No.1628/1991; that she along with the 2<sup>nd</sup> respondent and others executed a lease deed dt.15.07.1989 in favour of PHI Biogene Limited in regard to property bearing D.No.4-1/A/Part, i.e., two godowns at Uppal, Hyderabad from 15.07.1989 on monthly rent of Rs.15,000/- per godown and she was getting her share of the rent; that there was another Lease Deed dt.17.06.1996 executed in favour of SPIC-PHI Seeds Limited in regard to property bearing D.No.4-1/A/Part for a monthly rent of Rs.42,000/- and the lessee had obtained individual lease deed from the petitioner as well as some of the respondents; that she was advised that the suit, being one for partition, all persons who are having interest and share in the plaint schedule properties are necessary and proper parties; but the 2<sup>nd</sup> respondent is claiming the godown at Uppal which is part of the plaint schedule as his exclusive property though petitioner is having 1/5th share along with other defendants; and if she is not impleaded she would suffer grave and irreparable loss.

**COUNTER AFFIDAVIT OF RESPONDENT NO.2 AND RESPONDENT NO.8**

**12.** Counter-affidavit was filed by 2<sup>nd</sup> respondent and 8<sup>th</sup> respondent opposing the impleadment of petitioner. They pointed out that petitioner is none other than the wife of 1<sup>st</sup> respondent; if the petitioner really had any right in any of the plaint schedule properties, the 1<sup>st</sup> respondent should have made her a party to the suit in 2007 itself and no explanation is forthcoming from the 1<sup>st</sup> respondent as to why he did not implead the petitioner, his own wife, as a party-respondent as a party to the suit though they are residing under the same roof and are having good terms.

**13.** In regard to Exs.A.31 and A.32, the 2<sup>nd</sup> respondent contended that the said properties belong to the individuals in whose name they were purchased and do not constitute joint family property, and are not available for partition. According to him, under Ex.A.32-registered Sale Deed, Acs.9.00 gts. of land was purchased jointly by the petitioner and 9<sup>th</sup> respondent with equal shares, that the property was divided among the purchasers and separate pass books and title deeds were issued by the Revenue authorities; that 9<sup>th</sup> respondent had already conveyed her share admeasuring Acs.2.00 in favour of M/s.Vijaya Lakshmi Spintex Limited under a registered sale deed executed in 1995; that agricultural land had been converted into non-agricultural land; and the godowns at Uppal were shown at item No.28 of 'B' Schedule and the said property belongs to the partnership firm by name M/s. Venkateswara and Co. in which the

petitioner nor other respondents are not partners except the 2<sup>nd</sup> respondent. He contended that the said firm was constituted by himself and one Sri G. Laxminarayana, but it was dissolved under Ex.B.3-Deed of Dissolution and thereafter it was allotted to himself and he is therefore it's exclusive owner. He contended that petitioner had been set up by the 1<sup>st</sup> respondent only to protract the proceedings and she had no right or interest in the suit schedule properties, and the properties which are purchased in her individual name are not available for partition.

**14.** The 2<sup>nd</sup> respondent also denied the allegation about the purchase of property in the name of the petitioner and in the name of 9<sup>th</sup> respondent and Smt. A. Jamuna Rani of extent Acs.9.00 and also the land admeasuring Acs.3.20 gts with funds of nucleus of joint family. He also denied granting leases of the godowns. He contended that all the documents filed by petitioner were created documents and inadmissible in evidence.

**15.** The 1<sup>st</sup> respondent however did not file any counter and did not oppose the implead application.

**16.** In the court below, the petitioner filed Exs.P.1 to P.14 and respondents marked R.1 to R.13.

**THE ORDER IN I.A. NO.664/2017 OF THE COURT BELOW**

**17.** By order dt.22.11.2018, the Court below dismissed I.A.No.664 of 2017.

**18.** After referring to the contentions of the parties as well as the documents filed by the parties, it held that the 1<sup>st</sup> respondent, who is the petitioner's husband who filed the suit for partition, had consciously excluded the petitioner and also his son from being arrayed as parties and he also did not array the children of respondent nos.3 to 6 as parties to the suit.

**19.** It took note of the fact that respondent nos.3 to 7 are sailing with the 1<sup>st</sup> respondent in the suit and the only contesting parties are respondent nos.2, 8 and 9. It held that there was no single averment in the plaint about the petitioner being the owner of any of the properties.

**20.** It observed that in the suit, only the 'B' schedule properties were sought to be partitioned; that the petitioner claimed to be owner of only Acs.9.00 of land purchased under Ex.A.32; but the said item is shown as item No.3 with larger extent of Acs.36.00; likewise, while the petitioner claimed interest in Acs.3.20 gts. of land purchased under Document No.1628 of 1991 dt.29.06.1991 which is reflected as item No.22 of plaint 'B' Schedule, a larger extent Acs.10.20 gts was shown in that item, and the petitioner had not explained the difference between the extents claimed by her and the actual extents in item nos.3 and 22.

**21.** It also observed that mere receipt of 1/5th share of land does not amount to having ownership or interest in the godowns at Uppal as claimed by her.

**22.** More importantly, it stated that petitioner had not averred as to whether her claim is adverse to the interest of her husband or not and that her pleadings only indicate that she is opposing the contention of respondents, but not her husband.

**23.** It took note of the fact that the petitioner did not make a single statement against her husband as to whether he is protecting her interest or not and the fact that he also did not oppose the present implead application.

**24.** It observed that if petitioner's rights should be decided in her presence, she can also be impleaded as a plaintiff and it is not known why petitioner wants to be impleaded as a defendant, that too, at the fag end of the trial.

**25.** It further held that it was the 1<sup>st</sup> respondent who obtained certified copies of documents filed in O.S.No.186 of 2012 pending on the file of the I Additional Chief Judge, City Civil Court, Secunderabad which were filed by petitioner; this conduct on the part of the 1<sup>st</sup> respondent and the petitioner shows that petitioner and her husband are acting in tandem with common interest or else there was no necessity for 1<sup>st</sup> respondent to file copy applications as party-in-person and also file affidavits in his individual interest to secure

certified copies of documents filed in O.S.No.186 of 2012, which have been filed by the petitioner.

**26.** It therefore concluded that petitioner has not filed this I.A with a bonafide intention to protect the interests of the petitioner since the 1<sup>st</sup> respondent, her husband, was seeking share in the properties in which the petitioner is claiming to have right and interest.

**27.** Apart from that it also doubted the plea of the petitioner as to time when she came to know about the filing of the suit and opined that if her contention is that all persons having right and interest in the properties of the Hindu Undivided Family are proper and necessary parties, not only the petitioner, but her son and wife and children of defendant nos.2 to 5 / respondent nos.3 to 6 would also be necessary and proper parties.

**28.** Assailing the same, the present Civil Revision Petition is filed.

**29.** The counsel for petitioner contended that the Court below committed an error of jurisdiction in not impleading the petitioner and since the petitioner is claiming to be interested in one of the items of the plaint 'B' schedule property in the suit she ought to have been impleaded therein and grave prejudice has been caused to her.

**30.** The principles relating to impleadment of parties have been set out in the following judgments by the Supreme Court.

**31. In Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd<sup>1</sup>,** the Supreme Court laid down the principles relating to impleadment of parties in a suit. It observed:

*“ 3. The general rule in regard to impleadment of parties is that the 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 person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure (“the Code”, for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:*

*“10. (2) Court may strike out or add parties.—The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”*

**14.** *The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a*

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

*party, any person who is found to be a necessary party or proper party.*

*15. A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. 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 or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.”*

**32.** This was reiterated in **Vidur Impex & Traders (P) Ltd. v. Tosh Apartments (P) Ltd.**<sup>2</sup>, in the following terms :

*“ 41. ... the broad principles which should govern disposal of an application for impleadment are:*

*41.1. 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.*

*41.2. 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.*

*41.3. 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.*

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<sup>2</sup> (2012) 8 SCC 384

*41.4. 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.*

*41.5. 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.*

*41.6. 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.*

**33.** In **Kanakalata Das and others v. Naba Kumar Das and others**<sup>3</sup>, the Supreme Court declared that a necessary party is one without whom, no order can be made effectively, and the proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

**34.** In the instant case, it is important to note that the application made by the petitioner itself did not disclose in which item of the plaint 'B' schedule she claims to be having an interest. She merely stated that in property of Ac.9.00 purchased under Ex.A.32 she is claiming an interest.

**35.** Secondly, she did not state in the affidavit whether her interest is adverse to that of her husband who is the 1<sup>st</sup> respondent / plaintiff in

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<sup>3</sup> (2018) 2 S.C.C. 352

the suit. Her pleadings indicate that she is opposing only the contentions of the defendants and not that of the 1<sup>st</sup> respondent / plaintiff. The 1<sup>st</sup> respondent did not file any counter opposing her impleadment either. When admittedly she was living with the 1<sup>st</sup> respondent under the same roof and has obviously good terms with him, her plea that she came to know about filing of the suit only through her son and not from the 1<sup>st</sup> respondent is strange, particularly when the Court below found that the documents which she has filed along with the I.A., particularly those relating to O.S.no.186 of 2012 pending on the file of the I Additional Chief Judge, Secunderabad were obtained by her husband, 1<sup>st</sup> respondent. These circumstances indicate that they are acting in tandem and with common interest and there is strong possibility of collusion between them.

**36.** Also, this application has been filed ten years after filing of the suit after the evidence of the 1<sup>st</sup> respondent / plaintiff and other defendants who are supporting the 1<sup>st</sup> respondent is completed and the matter was coming up for the evidence of the 2<sup>nd</sup> respondent / defendant no.1 in the suit. There is strong suspicion that the application itself has been filed to further delay the disposal of the suit.

**37.** It is equally suspicious that she does not seek to be impleaded as a plaintiff and wants to be impleaded as a defendant so that she would get a fresh opportunity to lead evidence, which she would not have got had she wanted to be impleaded as the 2<sup>nd</sup> plaintiff.

**38.** In these circumstances, though the Court has discretion to implead a person at any stage of the proceedings, in the instant case, such impleadment is not desirable. Also, it cannot be said that in her absence no effective decree could be passed at all by the Court particularly when her husband, the 1<sup>st</sup> respondent, did not plead in the plaint that she has an interest in any of the plaint schedule properties, which he seeks to be partitioned.

**39.** I therefore do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court in exercise of the jurisdiction conferred on this Court under Article 227 of the Constitution of India.

**40.** The petitioner is granted liberty to take any independent proceedings, if she is so advised, to protect her alleged right, title or interest in any of the plaint schedule properties by impleading the appropriate persons as defendants.

**41.** The Civil Revision Petition is accordingly dismissed. No order as to costs.

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

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 13.02.2019

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