

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

**C.R.P.No.88 of 2020**

**O R D E R :**

1. This Revision is filed under Article 227 of the Constitution of India challenging the order dt.19.11.2019 in I.A.No.307 of 2018 in OS.No.516 of 2016 of the XI Junior Civil Judge, City Civil Court at Secunderabad.

2. Petitioner herein is a third party to the suit.

3. The said suit was filed by the 1<sup>st</sup> respondent against the 2<sup>nd</sup> respondent for recovery of possession of the suit schedule property, which is a flat bearing No.G1 on the ground floor comprising of 168 sq.ft. along with undivided share of the land admeasuring 18.50 sq.yards in a complex known as SANKALP CLASSIC located in premises No.12-11-1342/2 situated at Boudha Nagar, Warasiguda, Secunderabad.

**The contention of the 1<sup>st</sup> respondent/plaintiff in the suit**

4. It is the contention of the 1<sup>st</sup> respondent that she is the absolute owner of the said property having been gifted the same under a registered Gift Settlement Deed dt.22.10.2013 executed by her husband and that she is in possession thereof. The 1<sup>st</sup> respondent contended that the 2<sup>nd</sup> respondent/defendant was a watchman, who had been engaged by her husband to watch the property prior to the construction of the SANKALP CLASSIC Apartments through a builder; that he was staying there as a

licensee; and after construction of the complex through the builder, the 2<sup>nd</sup> respondent was permitted by the 1<sup>st</sup> respondent's husband to continue in the said apartment as a licensee without paying rent.

5. She alleged that the 2<sup>nd</sup> respondent colluded with the other apartment owners of the apartment complex and hatched a plan to grab the suit schedule property in the ground floor; that the said property is required by her husband, who intends to come and stay therein; that though the 1<sup>st</sup> respondent and her husband requested the 2<sup>nd</sup> respondent several times to vacate it, he is adamant and is not inclined to deliver possession to the 1<sup>st</sup> respondent.

6. The 1<sup>st</sup> respondent alleged that she terminated and revoked the 2<sup>nd</sup> respondent's license by issuing a legal notice dt.23.05.2016 calling upon the 2<sup>nd</sup> respondent to vacate the suit premises in one month, but he did not do so, and hence she filed the suit.

**The case of the 2<sup>nd</sup> respondent/defendant**

7. The 2<sup>nd</sup> respondent filed a counter denying the plaint allegations.

8. It is the contention of the 2<sup>nd</sup> respondent that the proposed party M/s. Sankalpa Classic Flat Owners Welfare Association is a proper and necessary party to the suit along with M/s Sankalp

Builders and Developers, who built the SANKALPA CLASSIC complex, in which the plaint schedule property is located.

9. The 2<sup>nd</sup> respondent denied the ownership of the 1<sup>st</sup> respondent over the suit schedule property.

10. He also contended that the said property is a watchman quarter and that he is a watchman appointed by the members of the Sankalpa Classic Flat Owners Welfare Association, the proposed party, but not a licensee as is alleged by the 1<sup>st</sup> respondent. He denied that the 1<sup>st</sup> respondent had any *locus* to file the suit.

11. He pointed out that the 1<sup>st</sup> respondent's husband was the owner of the land admeasuring 300 sq. yards, in which the complex was constructed; that he entered into development agreement with the builder for development of the property and executed the Development Agreement-cum-Irrevocable General Power of Attorney on 14.07.2008; that certain apartments fell to the share of the 1<sup>st</sup> respondent's husband, and other apartments fell to the share of the builder; that these apartments were sold by the parties; that there was no land left over in the plot and therefore the transfer made by the 1<sup>st</sup> respondent's husband in favour of the 1<sup>st</sup> respondent is null and void.

**The I.A.No.307 of 2018 filed by the petitioner/third party in the suit**

12. The petitioner herein/3<sup>rd</sup> party, which is the Sankalpa Classic Flat Owners Welfare Association, filed IA.No.307 of 2018 under Order I Rule 10 CPC for impleadment in the suit.

13. The petitioner alleged that the 1<sup>st</sup> respondent is not the owner of the suit schedule property and that the petitioner-society is the owner of the said property and that the 1<sup>st</sup> respondent deliberately did not implead the petitioner as a party to the proceedings.

14. Petitioner also denied that the 1<sup>st</sup> respondent was the owner of the property or that the 2<sup>nd</sup> respondent was a tenant. It is contended that the schedule property is a quarter of watchman/2<sup>nd</sup> respondent, who was appointed by the petitioner-society and he was not a licensee of the 1<sup>st</sup> respondent.

**The counter of the 1<sup>st</sup> respondent in IA.No.307 of 2018**

15. Counter affidavit was filed by the 1<sup>st</sup> respondent opposing this application.

16. She contended that the petitioner has no *locus* to file the application; that the petitioner is not a registered owners welfare society and the Secretary of the petitioner-association was not legally authorized to file the said application. Other allegations made by the petitioner were also denied and it is specifically contended that the petitioner-Society is not a necessary party to the suit.

**The order of the Court below**

17. By order dt.19.11.2019, the Court below dismissed I.A.No.307 of 2018, after referring to the contentions of the parties.

18. It held that *prima facie* the registered Gift Settlement Deed filed by the 1<sup>st</sup> respondent at the time of filing of the suit shows that the 1<sup>st</sup> respondent was the owner of the suit schedule property; that it is for the 1<sup>st</sup> respondent to choose the person against whom she should file the suit and she cannot be compelled to also add the petitioner as a party to the suit and that the petitioner cannot dictate to the 1<sup>st</sup> respondent to implead the petitioner as a party to the suit.

19. Assailing the same, this Revision is filed.

**The consideration by the Court**

20. Heard counsel for the petitioner.

21. The facts narrated above indicate that the 1<sup>st</sup> respondent had filed the suit against the 2<sup>nd</sup> respondent for his eviction on the ground that he is a licensee of the suit schedule flat and has placed reliance on the Gift Settlement Deed dt.22.10.2013 executed in her favour by her husband.

22. Though the petitioner has disputed the title of the 1<sup>st</sup> respondent to the suit schedule property and also contended that the 2<sup>nd</sup> respondent is a watchman and not a licensee, it is not the

case of the petitioner that it has ownership of the suit schedule property either.

23. Whether the 2<sup>nd</sup> respondent is a licensee of the 1<sup>st</sup> respondent or not, would any way be gone into in the suit, and the presence of the petitioner is not necessary to decide the said issue.

24. Counsel for the petitioner also stated that a separate suit had been instituted by the petitioner against the 1<sup>st</sup> respondent in respect of the suit schedule property. If so, the petitioner can prosecute the same and establish its right, title or interest, if any, in the suit schedule property in the said suit.

25. When the 2<sup>nd</sup> respondent had not set up any title to the property and the suit filed by the 1<sup>st</sup> respondent against the 2<sup>nd</sup> respondent is on the basis of her alleged title to the suit schedule property, if the petitioner is impleaded, it would convert the suit from a suit for recovery of possession into a suit to decide the title of the property.

26. The 1<sup>st</sup> respondent being the *dominus litis* cannot be compelled to litigate against the petitioner in a suit filed by her.

27. For all the aforesaid reasons, I do not find any merit in this Revision and it is accordingly dismissed at the admission stage. There shall be no order as to costs.

28. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

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**M.S. RAMACHANDRA RAO, J**

30<sup>th</sup> January, 2020.

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