

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

MONDAY, THE FOURTH DAY OF APRIL
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE A.VENKATESHWARA REDDY

CIVIL REVISION PETITION Nos. 184 & 193 OF 2014

CRP No. 184 OF 2014

Petition under Article 227 of the Constitution of India, against/aggrieved by the Order dated. 21.11.2013 passed in I.A.No.243 of 2013 in A.S.No.159 of 2010 on the file of the Court of the XI Addl. Chief Judge, City Civil Court at Hyderabad.

Between:

S. Ashok Kumar, S/o Late S. Sadashiva, aged about 49 years occpn. Painter, R/o H.No.13-2-601/9, SRT, CIB Quarters, Raheempura, Puranapul, Hyderabad.

...Petitioner/Petitioner

AND

1. Smt. Sadalaxmi W/o Sri Amar, aged 30 years, Occn. Housewife, R/o H.No.13-2-601/9, Raheempura, Hyderabad.
2. Smt. Tunk Kalavathi, W/o Sri T. Ramachander, aged 59 years, Occn. Housewife, Flat No.4, "Subhadra Nilayam" ICRISAT Colony, Phase No.II, Laxmi Nagar, Old Bowenpally, Secunderabad.

...Respondents/Respondents

CRPMP. NO: 235 OF 2014

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay of all proceedings in A.S.No.159 of 2010, on the file of the learned XI Addl. Chief Judge, City Civil Court, Hyderabad, pending disposal of the C.R.P.

Counsel for the Petitioner: SRI AADESH VARMA

Counsel for the Respondent No.1: SRI ASHOK KUMAR AGARWAL

Counsel for the Respondent No.2: SRI SYED YASAR MAMOON

CRP No. 193 OF 2014

Petition under Article 227 of the Constitution of India, against/aggrieved by the Order dated.21.11.2013 passed in I.A. No. 244 of 2013 in A.S.No. 159 of 2010 on the file of the Court at the XI Addl. Chief Judge, City Civil Court, at Hyderabad.

Between:

S. Ashok Kumar, S/o late S.Sadashiva aged about 49 years occpn painter
R/o H.No. 13-2-601/0, SRT, CIB Quarteres, Raheempura, Puranapul, Hyderabad

...Petitioner/Petitioner

AND

1. Smt. Sadalaxmi, W/o Sri Amar,aged 30 years occpn Housewife, R/o H.No. 13-2-601/9, Raheempura, Hyderabad.
2. Smt. Tunk Kalavathi, W/o Sri T.Ramchander,aged 59 years occpn Housewife, Flat no. 4," Subhadra Nilayam" ICRISAT Colony, Phase No. II, Laxmi nagar, Old Bowenpally, Secunderabad.

...Respondents/Respondents

CRPMP. No. 243 OF 2014

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to stay all proceedings in A.S.No. 159 of 2010, on the file of the XI Addl. Chief Judge, City Civil Court at Hyderabad, pending disposal of the CRP.

Counsel for the Petitioner: SRI AADESH VARMA

Counsel for the Respondent No.1: SRI ASHOK KUMAR AGARWAL

Counsel for the Respondent No.2: SRI SYED YASAR MAMOON

The Court made the following: COMMON ORDER

THE HON'BLE SRI JUSTICE A.VENKATESHWARA REDDY

CIVIL REVISION PETITION Nos.184 & 193 OF 2014

COMMON ORDER:

These two Civil Revision Petitions are arising out of orders in I.A.Nos.243 and 244 of 2013 in A.S.No.159 of 2010 on the file of the learned XI Additional Chief Judge, City Civil Court, Hyderabad. Accordingly, it is proposed to dispose of both these CRPs through the common order.

2. In I.A.Nos.243 and 244 of 2013 the proposed party has filed applications under Order I, Rule 10 read with Section 151 of Civil Procedure Code (for short 'CPC') and under Rule 28 of Civil Rules of Practice to implead him as 2nd respondent in the appeal as well as in the Interlocutory Application, pending, along with other consequential amendments.

3. The first appellate Court had dismissed the said applications filed in I.A.Nos.243 and 244 of 2013 with an observation that the petitioner did not respond at right time and now coming with this petition without any basis at a

belated stage in the appeal. There are no merits in the application. Accordingly, the petitions are dismissed.

4. Feeling aggrieved by the said orders, these two civil revision petitions are filed by the petitioner/third party alleging that the Court below ought to have considered that the Courts should adopt liberal approach and technical approach is not permitted. Purpose and object of Order I, Rule 10 is to allow a proper and necessary party to be impleaded in the case for correct and proper adjudication and to resolve the real question in controversy between the parties but the Court below has failed to appreciate the facts.

5. Heard learned counsel for the petitioner and respondents.

6. Perused the record.

7. **Brief facts** : The plaintiff has filed O.S.No.1947 of 2008 for ejectment and possession of immovable property and recovery of arrears of rents against the sole defendant Smt.Sadalaxmi. That suit was decreed by the trial Court. Feeling aggrieved by the said judgment and decree, the

defendant has filed A.S.No.159 of 2010, which is pending on the file of the learned XI Additional Chief Judge, City Civil Court, Hyderabad. While so, the petitioner, who is a third party has filed the present application under Order-1, Rule 10 read with 151 of C.P.C. and also under Rule 28 of Civil Rules of Practice.

8. The main averments of the affidavits, filed in support of I.A. Nos.243 and 244 of 2013, are that on 15.06.2013 through reliable source, he came to know about the pendency of appeal and on enquiry, he came to know about the facts of the case in respect of premises bearing No.Ex-CIB No.9/SRT House (MCH No.13-2-601/9), admeasuring 54.96 Sq.Yards, situated at Raheempura, Hyderabad and so also about judgment and decree passed in O.S.No.1947 of 2008. It is further submitted that the petitioner and his two elder brothers viz. S.Sravan Kumar and S.Vijay Kumar are the only sons and legal heirs of their late father S.Sadashiva, who has purchased the suit schedule property as stated above from A.P.Housing Board. After the death of their father, the petitioner and his brothers have paid

the rents to the AP Housing Board. Thereafter, his brother Sravan Kumar has gifted the property in favour of his wife Sadalaxmi/1st respondent with a malafide intention. The said gift is not binding on him. Accordingly, he filed the suit for partition and separate possession and to declare that gift deed dated 27.01.2006 bearing document No.385 of 2006, executed by Sravan Kumar in favour of the 1st respondent is null and void and not binding on the petitioner herein and his brothers. The said suit in OS No.980 of 2009 filed by the petitioner was decreed 30.08.2011. Suit in O.S.No.1947 of 2008 is a collusive one. The said judgment and decree is not binding on the petitioner and that he is necessary and proper party to A.S.No.159 of 2010.

9. This application, filed before the trial Court, was resisted by the 2nd respondent, who is a purchaser from the 1st respondent stating that the petitioner has not mentioned about the details of the sale transaction payment and payment of consideration to A.P.Housing Board. Whereas, brother of the petitioner Sravan Kumar was rightful owner of suit schedule property having purchased it from the A.P.Housing

Board on 27.01.2006 under registered sale deed bearing document No.385 of 2006 and thereafter, he has gifted the property in favour of the 1st respondent, who is his wife. The petitioner having kept silent all these days now approached the Court and the matter is decided before the trial Court not entitling the petitioner for impleadment in the appeal and stated that he is neither the necessary party nor a proper party to the suit as well as the appeal. As far as the judgment and decree in OS No.980 of 2009 is concerned, it is an ex-parte decree and the plaintiff No.1 herein has taken steps to set aside the ex-parte decree. This petition is filed at a belated stage to harass the 1st respondent, who is a bonafide purchaser. If at all the petitioner has got any right, he may work out the same in OS No.980 of 2009.

10. The 1st respondent also filed a detailed counter denying the petition averments.

11. Point for consideration is :

Whether the orders impugned dated 21.11.2013 in I.A.Nos.243 & 244 of 2013 are sustainable in law or not ?

12. **Point :**

13. The claim of the petitioner/3rd party is that very recently on 15.06.2013 he has come to know through reliable source about the dispute in OS No.1947 of 2008 and the judgment and decree passed thereon and the pendency of A.S.No.159 of 2010 and that he is a necessary and proper party to the proceedings in A.S.No.159 of 2010.

14. It is the further case of the petitioner that he along with his two brothers Sravan Kumar and Vijay Kumar are the only legal heirs of their later father Shiva Kumar, who purchased the suit schedule property from AP Housing Board and that even after the death of their father, they have paid the instalment amount. It is also stated that, in the order impugned, the learned first appellate judge has clearly mentioned that no oral or documentary evidence is adduced during enquiry in I.A.Nos.243 & 244 of 2013 except filing the affidavit along with the petition.

15. Though it is stated by the petitioner that he has obtained decree in OS No.980 of 2009 on 30.08.2011, it is clearly averred in the counter filed by the 2nd respondent that

she is taking steps to set aside the ex-parte decree and she is contesting the matter before the trial Court. Further, it is the case of the 2nd respondent that she has purchased the suit schedule property from Sravan Kumar, who is the brother of the petitioner herein. It is further stated that the Sravan Kumar has purchased the suit schedule property through a registered sale deed dated 27.01.2006 vide document bearing No.385 of 2006 from the Housing Board and thereafter executed a gift deed in favour of his wife i.e. the 1st respondent in the year 2006 itself. Accordingly, the 2nd respondent has purchased it from the wife of Sravan Kumar, who is the 1st respondent and that the petitioner/3rd party is not concerned with the suit.

16. Order-I, Rule 10 of CPC enables the Court to add any person as a part at any stage of the proceedings if the person whose presence before the Court is necessary in order to enable the Court to effectively and completely adjudicate the upon and settle all the questions involved in the suit. Avoidance of the multiplicity of proceedings is also one of the objects of the said provision.

17. Be it stated that here in the instant case, the petitioner did not raise any objection when the suit was pending before the trial Court. He remained silent throughout and filed the present application in the Appeal Suit. The Appellate Court has held that the petitioner has slept over his right for about six years without objecting execution of the gift deed and now he has come up with the petition at a belated stage in the appeal. He has not come with clean hands to the Court and that without filing any scrap of paper in proof of his contention, he is not entitled to be impleaded in the proceedings in the Appeal Suit. He is neither necessary party nor proper party for effectual adjudication of the matter in the dispute.

18. The case of the 2nd respondent is that the subject property was purchased by the husband of the 1st respondent viz. Sravan Kumar from AP Housing Board through a registered sale deed in the year 2006 and thereafter, he has executed a gift deed in favour of his wife 1st respondent, who in turn executed a sale deed in favour of the second respondent. Therefore, viewed from any angle, claim of the

petitioner that his late father has purchased the schedule property from AP Housing Board and that all the three brothers are having equal share in it and the husband of the 1st respondent clandestinely obtained sale deed behind back of other brothers and executed gift deed in favour of his wife cannot be accepted at this stage. The petitioner has not even filed the alleged judgment and decree in OS No.980 of 2009, which is a suit for partition.

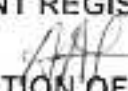
19. What is required in an application under Order-I, Rule 10 of CPC is that the presence of such party is essential for the Court to effectively adjudicate the matter in dispute. Further, the plaintiffs, being *dominus litis*, cannot be compelled to add a party against the wishes of the plaintiff.

20. That being the legal position, I do not find any jurisdictional error committed by the appellate Court in dismissing the applications in I.A.Nos.243 and 244 of 2013 in A.S.No.159 of 2010. In such facts and circumstances of the case, I do not find any reason to interfere with the findings recorded by the Court below and the orders impugned passed in I.A.Nos.243 and 244 of 2013 in As No.159 of 2010 does not

warrant any interference of this Court and they are sustainable.

21. In the result, CRP Nos.184 of 2014 and 193 of 2014 are dismissed confirming the orders impugned in I.A.Nos.243 and 244 of 2013 in A.S.No.159 of 2010, on the file of the XI Additional Chief Judge, City Civil Court, Hyderabad. In the circumstances of the case, there shall be no order as to the costs. Consequent thereto, miscellaneous petitions, if any, pending, in these CRPs, shall stand closed.

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SD/-T.KRISHNA KUMAR
ASSISTANT REGISTRAR

SECTION OFFICER

To,

1. The XI Additional Chief Judge, City Civil Court at Hyderabad.
2. One CC to Sri Aadash Varma, Advocate [OPUC]
3. One CC to Sri Ashok Kumar Agarwal, Advocate [OPUC]
4. One CC to Sri Syed Yasar Mamoon, Advocate [OPUC]
5. Two CD Copies
6. One Spare Copy

GJ


HIGH COURT

DATED:04/04/2022

COMMON ORDER

CRP.Nos.184 & 193 of 2014



**DISMISSING THE BOTH CRPs.
WITHOUT COSTS.**

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