

K. Jayasree Vs. Singam Rao Sarath Chandra and Another

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Court : Andhra Pradesh

Decided On : Nov-23-2015

Judge : A. Ramalingeswara Rao

Appeal No. : Civil Revision Petition Nos. 314 & 5047 of 2014

Appellant : K. Jayasree

Respondent : Singam Rao Sarath Chandra and Another

Judgement :

Common Order:

These two Civil Revision Petitions are being disposed of by this common order in view of common cause of action.

The petitioner in both the revision petitions is a third party to O.S.No.1481 of 2013 pending on the file of VI Junior Civil Judge, City Civil Court, Hyderabad. The suit was filed by the 1st respondent herein against the 2nd respondent herein seeking perpetual injunction restraining the 2nd respondent and its employees from interfering with the possession of the 1st respondent-plaintiff. In the said suit, the revision petitioner filed two applications, I.A.No.4 of 2014 and I.A.No.5 of 2014 seeking to implead herself as the 2nd defendant/2nd respondent in the suit and in the interlocutory applications and when the said applications were dismissed by a common order dated 26-11-2014, the above civil revision petitions are filed.

The case of the revision petitioner is that she is the absolute owner and possessor of premises bearing No.17-1-386/1/S/89, Keshava Nagar, Champapet, Hyderabad and she alleges that the 1st respondent herein constructed an unauthorised house and obtained municipal No.17-1-386/1/90/1 with the active collusion of the 2nd respondent herein. There was no permission to construct the house and in spite of her several complaints, no action was taken against the 1st respondent herein. She was constrained to file W.P.No.13117 of 2013 and in view of the order dated 16-04-2013 therein, a notice was issued to the 1st respondent and challenging the same, the suit was filed by the 1st respondent. She submits that she is a necessary party to the proceedings. The 2nd respondent herein, who was the defendant in the suit, filed a counter stating that the petitioner herein lodged a complaint against her neighbour, who is the 1st respondent herein and after inspection of the premises, a notice was issued to the 1st respondent. The counter further states that the 1st respondent-plaintiff constructed the house without any title and the writ petition filed by the revision petitioner is pending in this Court. Hence, they could not take any penal action. The trial Court dismissed the applications by order dated 26-11-2014 holding that it is well settled that the plaintiff may choose the defendants against whom he seeks a relief and he cannot be compelled to sue a person against whom he seeks no relief by relying on the decision in **Mumbai International Airport Private Limited v. Regency Convention Centre and Hotels Private Limited and others (2010 (5) SCJ 831)**. The trial Court also held that the petitioner failed to file a single document showing that she is an immediate neighbour to the suit schedule when the suit was filed against the 2nd respondent herein.

It is clear from the record that at the instance of the petitioner only notice was issued to the plaintiff by the defendant in the suit. It is the case of the 2nd respondent/defendant that the building was constructed unauthorisedly and without any title. The issue with regard to impleadment of the parties in a case of this nature was decided earlier by this court. This Court in **Sarada Bai and others v. Shakuntala Bai and others (1992 (2) Andhra Law Times 660)** held that the neighbours have locus standi to file a revision under Article 227 of the Constitution of India against the order passed by the lower court. In the said case, the petitioners before this Court, who were not parties to the suit proceedings,

challenged the orders passed regularizing the constructions. In those circumstances, an objection was raised to their challenge, but this court did not agree with the objections and held that they have locus standi.

In a latter decision in **Mula Kalavathi and others v. Suddala Narayana and others** (2008 (2) Andhra Law Times 465) also, it was held that in a case of cancellation of construction permission at the instance of neighbours, they are not only proper parties, but also necessary parties. Unfortunately, these decisions were not brought to the notice of the trial Court and the trial Court dismissed the applications filed by the revision petitioner. There is a distinction between a necessary party and proper party'. A person who ought to have been joined as a party and in whose absence no decree or order can be passed is called as a necessary party whereas a person, whose presence is necessary for complete and effectual adjudication of the questions involved in the suit is called a proper party'.

In **Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Great Bombay and others** (1992 (2) Supreme Court Cases 524), the Supreme Court considered the case of a lessee seeking impleadment in a suit filed by dealer in possession of a service station under an agreement with lessee against a notice issued Municipal Corporation for demolition of certain structures raised by it on the premises and held that the lessee in such a suit cannot be directed to be impleaded. The Supreme Court held as follows:

13. A clear distinction has been drawn between suits relating to property and those in which the subject matter of litigation is a declaration as regards status or legal character. In the former category, the rule of present interest as distinguished from the commercial interest is required to be shown before a person may be added as a party.

14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It

is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Simmilar provision was considered in **Amon V. Raphael Tuck and Sons Ltd** (1956 1 All ER 273: 1956 1 QB 357), wherein after quoting the observation of Wynn-Parry, J. in **Dollfus Mieg et Compagnie S.A. V. Bank of England** (1950 e All ER 605, 611), that their true test lies not so much in an analysis of what are the constituents of the applicants rights, but rather in what would be the result on the subject matter of the action if those rights could be established, Devlin, J. has stated:

The test is May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights'. ?

Hence, in the present case, the petitioner cannot be called as a necessary party but it has to be seen whether he is a proper party or not. The Petitioner has been complaining about the unauthorised construction by the Plaintiff right from the beginning and also filed W.P. 13117 of 2013 in this court. The original defendant, in a case like this, for various reasons, may not contest the case effectively in which case the presence of the proposed defendant would help the court in coming to a right conclusion. The proposed defendant may cause the original defendant to bring the relevant facts to the notice of the court. Though the view taken by the trial court, in strict sense of the provision of Rule 10 of Order 1 is correct, in the facts and circumstances of the case, the trial court should have exercised its discretion in a pragmatic manner. I am of the opinion that the proposed defendant can be impleaded for the limited purpose of bringing the

nature of constructions made by the Plaintiff to the notice of the court without allowing to traverse beyond the said issue. In view of pronouncements of this Court and in the facts and circumstances of the case, the order dated 26-11-2014 in I.A.No.4 of 2014 and I.A.No.5 of 2014 in O.S.No.1481 of 2013 passed by the trial Court is set aside and the applications filed by the Petitioners are allowed for the limited purpose indicated above. The Civil Revision Petitions are accordingly allowed by allowing I.A.No.4 of 2014 and I.A.No.5 of 2014 in O.S.No.1481 of 2013 filed by the revision petitioner and the revision petitioner shall be impleaded as 2nd defendant in the suit as well as in interlocutory application for the limited purpose indicate above.

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