

S. Kumar and ors. Vs. the Super Hotel, Lodging and Boarding and ors.

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Court : Andhra Pradesh

Decided On : Mar-21-1992

Reported in : 1992(1)ALT568

Judge : A. Gopal Rao, J.

Acts : Code of Civil Procedure (CPC) - Order 1, Rule 10

Appeal No. : Civil Revision Petition No. 3920 of 1991

Appellant : S. Kumar and ors.

Respondent : The Super Hotel, Lodging and Boarding and ors.

Advocate for Def. : C.P. Sarathy and ;B. Dayakar Reddy, Advs. for the Respondent Nos. 1 and 2

Advocate for Pet/Ap. : M. Ramaiah, ;D. Krishna Murthy, ;K. Chidambaram and ;G. Suresh, Advs.

Disposition : Petition allowed

Judgement :

ORDER

A. Gopal Rao, J.

1. Petitioners in this revision petition are third-parties, who sought to be impleaded as party-defendants in the suit O.S.5244/1991, on the file of the IX Assistant Judge, City Civil Court, Hyderabad.

2. The facts, necessary for disposal of this revision petition, in brief, are as follows:

Petitioners are the owners of the suit schedule property, viz., the building bearing municipal No. 5-8-263 and 264 situated at Public Garden Road, Nampally, Hyderabad. The 1st respondent is the tenant and the 2nd respondent is the Commissioner of Police, Hyderabad, who is the sole defendant in the suit. Petitioners have obtained an order of eviction against the 1st respondent on 27-3-1986 in R.C. 404/76 on the file of the Principal Rent Controller, Hyderabad and the appeal, R.A. 182/86, filed by the 1st respondent against the order in R.C. 404/76, on the file of the Additional Chief Judge, City Small Causes Court, Hyderabad, is pending. The 1st respondent filed the present suit O.S. 5244/91, seeking for the relief of declaration that rejecting the licence to run business (hotel) by the defendant (second respondent herein) is illegal and void and directing the defendant (Rule 2 herein) to grant licence to the suit premises and for perpetual injunction restraining the defendant from interfering with the business of the 1st respondent in the suit premises. In this suit (O.S. 5244/91), petitioners-herein tiled I.A. 1094/91 under Order 1, Rule 10 C.P.C, praying the Court to implead them as defendants 2 to 5. That application was dismissed by the lower court on 4-12-1991. Aggrieved by the same the Present revision petition is filed by the petitioners.

3. The petitioners contend that though they are not necessary parties, they are proper parties to the suit as, they are the owners of the building and, therefore, they are entitled to be impleaded as party-defendants in the suit. The learned Counsel for the 1st respondent, however, contends that no relief is asked for against the petitioners and the question of granting licence for running the business is a matter concerning the second respondent-herein and the petitioners have no say in the same. Therefore, it is contended that the petitioners-herein need not be impleaded as party-defendants in the suit.

4. In view of the above rival contentions, the point that falls for consideration in this revision petition is-whether the petitioners are entitled to be impleaded as party-defendants in the suit?

5. The learned Counsel for the petitioners contends that the husband of the 1st respondent was the original tenant in the suit premises and he died in the year 1980. The 1st respondent, however, was running the hotel business till 1983 without informing the petitioners about the death of her husband, who is the original licensee. In the year 1983, when the 1st respondent made an application for renewal of licence to the 2nd respondent, the same was rejected. Aggrieved by the same, she filed W.P. 3298/1983 in this Court, which was also dismissed. The 1st respondent is, therefore, not running the hotel business since 1983. Again in the year 1984, the 1st respondent filed another application for renewal of licence to run the hotel business in the premises in question and the same was also rejected by the 2nd respondent. Writ Petition No. 11229/1984 filed by the 1st respondent-herein in this Court was also dismissed. Again in the year 1988, 1st respondent filed another application for renewal of licence, which was once again rejected by the 2nd respondent. The 1st respondent filed Writ Petition No. 11860/86 aggrieved by the said order and the said writ petition was also dismissed on 23-2-1990.

6. It is pertinent to note that in all these writ petitions, referred to above, the petitioners-herein have got themselves impleaded as party-respondents. The 1st respondent filed an application for grant of a trade licence for running a lodge. This was rejected by the Municipal Corporation of Hyderabad on 17-8-1990. The reasons given for rejecting the same are that the building is in a horrible condition and that the applicant (R-1) was convicted for an offence under the Suppression of Immoral Traffic (in Girls & Women) Act in STC 9/82 by the VII Metropolitan Magistrate, Hyderabad:

7. The petitioners contend that suppressing all the above facts, the 1st respondent-plaintiff has filed the present suit for the same relief, viz., for grant of a licence to run a hotel, which, in fact, was rejected as could be seen from the orders passed in all the three writ petitions, referred to above. The petitioners,

therefore, contend that in view of all the facts stated above, they are entitled to be impleaded as party-defendants in the present suit, in order to safeguard their own interests and also to help the 2nd respondent to give a just decision in the matter of granting licence to the 1st respondent for running a hotel in the suit premises. It is also stated by the petitioners that by impleading them as party-defendants, no prejudice will be caused to the plaintiff (1st respondent).

8. In *Udit Narain Singh v. Board of Revenue*, : AIR 1963 SC786 it was held that 'a necessary party is one without whom no order can be made effectively; a 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'. In para-10 of the same decision, it was held:

'..... The question of making such a person as a party to a writ proceeding depends upon the judicial discretion of the High Court in the circumstances of each case.'

9. In *Subbarayudu v. Dist. Collector, Nellore*, (1977) 1 An.W.R. 173 it was held that 'the Court has power to add a person whose presence may help it to decide the question before it effectively even though he is not a necessary party, for shortening litigation and to avoid multiplicity of proceedings.

The same view was taken in the decisions in *Lakshamma v. Someswara Rao*, A.I.R. 1953 Hyd. 170 and *Razia Begum v. Anwar Begum*, : [1959]1SCR1111 . In *Khaja Abdul v. Mahabub Saheb*, : AIR 1979 AP152 it was held that:

'The expression settle all the questions involved in the suit used in Order 1, Rule 10(2) C.P.C., has to be liberally interpreted. The crucial test for addition or otherwise of a particular party is necessary or atleast proper, without whom there can be no effective and final adjudication of all issues involved in the suit with regard to the same subject-matter.'

In that case, plaintiff, claiming as owner, filed a suit for eviction of the defendants. The defendants denied title of the plaintiff and claimed that they were in possession of the suit schedule property. Respondent who sought to implead himself claimed that he is the owner of the property. Under those circumstances, it

was held that he is a necessary and property to the suit.

10. So, from the above decision it can be seen that even though no relief is asked for or can be granted against the party who is sought to be impleaded as a party, still the said party can be impleaded in order to decide the questions involved in the suit effectively. It is also made clear in all the decisions referred to by both the sides, that the question of impleading a party will depend upon the circumstances in each case.

11. Therefore, it is necessary to see how-far the claim of the petitioners for impleading them as party-defendants in the suit is justified?

12. As stated earlier, in all the writ petitions filed by the 1st respondent-herein for the same relief now sought in the suit, the present petitioners were impleaded as party-respondents. In fact, the necessary information regarding the condition of the building and other aspects were given by the petitioners to the 2nd respondent, based on which the renewal of licence in favour of 1st respondent-herein was rejected. The 1st respondent herself has alleged in the plaint now filed in the suit (O.S. 5244/91) that:

'..... Prior to that there are some disputes in between the tenant and as well as the owner. When the owner utterly failed in his alleged claim, then instigated the defendants therein and influenced the department and made several obstacles in renewing the licences. At the instance of the landlady, the defendant filed false cases against the plaintiff and also stated that the building is old one and it is not in a condition. On that Municipal Engineer was also appointed to inspect the present suit schedule property and also he reported (that) the building condition...'

13. Therefore, the petitioners-herein, by being party-defendants in the suit, will help the Court in getting the suit effectively disposed of one way or the other by furnishing the necessary information regarding the condition of the house etc. Therefore, the contention of the 1st respondent that the petitioners have no say in the matter of grant of licence by the 2nd respondent in favour of the 1st respondent for running a hotel is not tenable.

14. For all the reasons stated above, I hold that the order of the lower Court is vitiated by erroneous exercise of jurisdiction vested in it and the same is accordingly set aside. The revision petition is thus allowed. No costs.

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