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Aruna M. Dixit and ors. Vs. Anandi Bai V. Dixit and ors.

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Court : Andhra Pradesh

Decided On : Jul-25-2008

Reported in : 2008(5)ALD362

Judge : P.S. Narayana, J.

Acts : Limitation Act, 1877 - Sections 22; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 1, Rule 10

Appeal No. : CRP No. 2149 of 2008

Appellant : Aruna M. Dixit and ors.

Respondent : Anandi Bai V. Dixit and ors.

Advocate for Def. : K. Ravinder Reddy, Adv. for Respondent Nos. 1, 2, 4, 6 and 7 and ;T.V. Panduranga, Adv. for Respondent No. 5

Advocate for Pet/Ap. : B. Vijaysen Reddy, Adv.

Disposition : Petition allowed

Judgement :

ORDER

P.S. Narayana, J.

1. This Court admitted the civil revision petition on 13.6.2008 and granted interim injunction in CMP No. 2821/2008. The 5th respondent - NCL Homes rep. by its M.D. filed CRP MP No. 3779/2008 praying for vacation of the interim injunction granted by this Court in CMP No. 2821/ 2008 in CRP No. 2149/2008.

2. It is stated that the other respondents also had been served and none represents the other respondents. At the request of the Counsel on record, the civil revision petition itself is being disposed of finally, though the matter is appearing under the caption of interlocutory.

3. Sri B. Vijaysen Reddy, the learned Counsel representing the revision petitioners would submit that may be that the Developer may not be a sharer, but however, since in a partition action, such party also would be a necessary party for the reason that the Developer would get some limited interest in the immovable property by virtue of the agreement entered into between the said Developer and certain of the sharers. The learned Counsel also would maintain that under the guise of the Development Agreement, the 5th respondent is proceeding with the construction of the building in undue haste changing the very nature of the property and in view of the same, instead of allowing the application, the learned II-Additional District Judge, Ranga Reddy District totally erred in dismissing the application.

4. On the contrary, Sri T.V. Panduranga, the learned Counsel representing the 5th respondent/Developer placed the agreement before this Court and had read over the terms and conditions agreed upon between the parties and would maintain that in the light of the terms and conditions agreed upon between the parties, the 5th respondent may not be a necessary party since the 5th respondent is not a sharer. However, the learned Counsel in all fairness would submit that to the limited extent of raising the super-structures, the Developer may be interested and not beyond thereto. The Counsel also would maintain that in the light of the agreed terms and conditions between the parties, the revision petitioners have no interest in the subject-matter of controversy. The Counsel also would maintain that when such party was not brought on record at all, in a CRP granting interim injunction as against such a party, who was a non-party as on that day to the suit also cannot

sustained.

5. Heard the Counsel on record.

6. The order impugned in the civil revision petition reads as hereunder:

On perusal of records, admittedly the suit is filed for partition and separate possession; it is the consistent case of petitioners that the respondent Nos. 1 to 4 entered into development agreement with 5th respondent who is engaging to transport construction material in 'B' schedule property and that 5th respondent is proper and necessary party to the suit. Since the suit is filed only for partition and separate possession among the shares, the proposed party who is only a Developer on behalf of respondent No. 1 to respondent No. 4 is neither a proper nor necessary party to the partition suit. The proposed party is not having any share in the suit schedule property and that he is not entitled for any partition and separate possession of the property, Further proposed party is not having any interest except to cause development of the property on behalf of R.1 to R.4. Therefore, the proposed party is not a necessary and proper party to the suit.

In the result petition is dismissed.

7. It may be appropriate to have a look at Order I Rule 10 of the Code of Civil Procedure and the same reads as hereunder:

Suit in name of wrong plaintiff.-(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(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 question involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended.-Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the 'plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877), Section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

8. It is no doubt true that the proposed party/5th respondent is only a Developer having entered into a Development Agreement with certain of the sharers. This Court is not inclined to express any opinion especially in the light of the terms and conditions which had been agreed upon between this Developer and certain of the sharers who claimed to be the absolute owners, it is a matter to be decided at the time of final disposal of the suit. It is no doubt true that in a partition action, such Developer not being a sharer would be having only a limited interest - the interest of developing the property by raising the buildings and nothing beyond thereto. However, in the facts and circumstances though the Developer as such may not be a sharer since the Developer also would be deriving some limited interest in the immovable property to the extent of proceeding with the construction activity in the light of the terms and conditions of the agreement, this Court is of the considered opinion that such party also may be a necessary and proper party for proper adjudication of the questions in controversy. It is no doubt true this party was not brought on record at all and the application was dismissed and questioning the same, the present civil revision petition had been preferred. Certain submissions were made that as against such a non-party, granting of interim injunction for the

first time by the Revisional Court may not be justified. It is needless to say that in the light of the reasons specified above, the impugned order is hereby set aside and the civil revision petition is allowed and let the 5th respondent also be brought on record and let the 5th respondent put forth his defence in accordance with law before the original Court. It is needless to say that inasmuch as the civil revision petition is being allowed, liberty is given to the petitioners to move appropriate applications before the original Court. Except making this observation, nothing further can be done and it is needless to say that the interim order made by this Court in CMP No. 2821/2008 can no longer be continued. The civil revision petition is allowed accordingly. No order as to costs.

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