

ANDHRA PRADESH HIGH COURT**Bench: The Hon'ble Dr. Justice K. Manmadha Rao****Date of Decision: 10 November, 2023**

C.R.P.No.1515 of 2023

S. Nagarathnamma**Versus****Lakshmiparasad****Legislation:**

Order 1, Rule 10 of the Code of Civil Procedure (C.P.C)

Subject: Impleadment of Parties in a Property Suit – Application for impleadment as defendants in a property suit, claiming rights over the property, and subsequent dismissal of the application by the lower court for lack of direct nexus with the main suit and perceived tactic to prolong proceedings.

Headnotes:

Impleadment of Parties – Dismissal of Application for Impleadment in Property Suit – Petitioners sought to be impleaded as defendants, claiming a right over the property in question – Application dismissed by the lower court for lack of direct nexus with the main suit and for being a tactic to prolong proceedings – Revision filed against this dismissal. [Para 1-3, 5]

Application of Order 1 Rule 10(2) CPC – Legal Principles for Impleadment – The Apex Court's guidelines on when a court may add parties to a suit – Emphasis on the need for proper or necessary parties, contrasting with the plaintiff's dominus litis right to choose litigants. [Para 6]

Arguments Against Impleadment – Petitioners accused of malafide intentions and delay – Claimed right over the property after a long period, raising doubts on the genuineness of their claim – Respondents argue against the impleadment citing lack of evidence and improper application. [Para 7]

Legal Distinction in Impleadment – Apex Court's distinction between property suits and declaratory suits regarding the interest required for impleadment – Necessity of a direct or legal interest rather than a mere commercial interest. [Para 8]

Court's Analysis and Decision – Suit for declaration and permanent injunction – Court notes lack of proper explanation or evidence from petitioners

regarding their claim – Observes delay and lack of initial action from petitioners – Dismisses revision for lack of merit and improper application for impleadment. [Para 10-14]

Referred Cases:

- Mumbai International Airport Private Limited v. Regency Convention Centre and Hotels Private Limited and Others (2010) 7 SCC 417
- Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay and Others (1992) 2 SCC 524

Representing Advocates:

For Petitioners: Mr. V.V. Satish

For 1st Respondent/Plaintiff: Mr. P. Veera Reddy, Senior Counsel

For 2nd Respondent/1st Defendant: Mr. Shaik Khaja Basha

THE HON'BLE DR.JUSTICE K. MANMADHA RAO

ORDER:

Aggrieved by the orders dated 01.05.2023 passed in I.A.No.239 of 2023 in O.S.No.216 of 2010 on the file of the Court of Additional Junior Civil Judge, Penukonda, (in short 'the court below') the present revision is filed.

2. The petitioners herein are the third parties 1 to 3; 1st respondent herein is the plaintiff and respondents 2 to 4 are defendants before the court below.

3. The petitioners herein have filed an application under order 1, rule 10 of C.P.C to permit the petitioners/ third parties 1 to 3 to implead them as defendants 5 to 7 in O.S.No.216 of 2010, contending that the 1st petitioner is the wife, petitioners 2 and 3 and plaintiff in the suit are son and daughters of Late Anjineyulu, who died leaving behind him the petitioners 1 to 3 and the plaintiff and that they have right over the plaint schedule property. The court below dismissed the said application on the ground that the application is filed only to drag on the proceedings in the suit and the petitioners have no

direct nexus with the main suit and that they filed the suit with collusion intention. Assailing the same, the present revision came to be filed.

4. Heard Mr. V.V.Satish, learned counsel for the petitioners, Mr. P. Veera Reddy, learned Senior Counsel appeared for the 1st respondent/ plaintiff and Mr. Shaik Khaja Basha, learned counsel for the 2nd respondent/ 1st defendant.

5. Learned counsel for the petitioner would contend that having regard to the averments made in the plaint with regard to flow of title to the plaintiff and the properties parties and the plaintiff are the children of late S.Anjaneyulu, the court below ought to have seen that the petitioners are the proper and necessary parties to the suit, but the court below erred in dismissing the application without adverting to the issue as to whether the petitioners are proper and necessary parties. Therefore the impugned order of the court below is based on mere surmises and not in accordance with law. Hence the revision is liable to be allowed.

6. In support of the contention of the petitioners, learned counsel for the petitioners placed on record the decision of the Hon'ble Apex Court in "Mumbai International Airport Private Limited v. Regency Convention Centre and hotels Private Limited and Others"¹, wherein it was held as follows:

"13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure ("the Code", for

¹ (2010) 7 SCC 417

short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

"10. (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 questions involved in the suit, be added."

14. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.

7. During hearing learned counsel for the respondents would contend that the petitioners filed the application after long elapse of 13 years that too at the stage of cross examination of PW-1 with a malafide intention to drag on the proceedings and they failed to submit their proof of address. The address of the petitioners mentioned in the application is wrong and caveat notices which sent to them are returned. The petitioners wanted to implead themselves as defendants claiming that they have right over the plaint schedule property. It is further contended that the petitioners are none other than the mother and sisters of the plaintiff. The petitioners have kept silent for 13 years and claiming to have right over the plaint schedule

property, which shows that they have intentionally filed the application in collusion to procrastinate the matter. It is further contended that except making a mere statement that the petitioners are proper and necessary parties to the suit, but no evidence is placed on record before the court below clarifying the same. Therefore, the court below already considered the issue in a right perspective and dismissed the application. Therefore, the revision is not maintainable and same is liable to be dismissed.

8. In support of the contention of the respondents, learned counsel for the respondents placed on record the decision of the Hon'ble Apex Court in "Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay and Others"², wherein it was 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

² (1992) 2 SCC 524

legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will 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. Similar provision was considered in *Amon v. Raphael Tuck & Sons Ltd.*³, wherein after quoting the observations of Wynn-Parry, J. in *Dollfus Mieg et Compagnie SA. v. Bank of England*⁴, 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'."

9. Perused the record.

10. The suit in O.S.No. 216 of 2010 has been filed for declaration of his right and title over the plaint schedule property and for consequential relief of permanent injunction. No doubt, it is settled law that the suit for declaration of right and title is in personam and not in rem as such the declaratory decree binding only the parties to the suit. The court below categorically held that upon perusal of the plaint the plaintiff therein has mentioned only to the extent of his share only, therefore the petitioners have got nothing to do with the same. Further no explanation was given how they have right over the plaint schedule property. As could be seen from the impugned order of the court below would show that the counsel for the petitioners before the court below also failed to appear to advance the arguments. It is also categorically mentioned by the court below that even the otherwise the court cannot rescue the individual, who have slept over his rights for about 13 years that too the petitioners are none other than the

³ (1956) 1 All ER 273 : (1956) 1 QB 357

⁴ (1950) 2 All ER 605, 611

mother, sisters of plaintiff. Therefore they have knowledge about the proceedings, but it seems that they kept quiet for about 13 years and at the stage of cross examination of PW-1, they came forward with implead petition is not maintainable. The respondents 3 and 4 are the legal heirs of deceased D. Rangappa, who are on record and if at all the plaintiff had any grievance against the petitioners, he would have definitely made them as parties to the main suit, but he failed to do so as held by the court below.

11. It is the contention of the learned counsel for the petitioners that any person who ought to have been joined as plaintiff or defendant, or any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit as per decision-1 cited supra.

12. As could be seen from the affidavit of the petitioners would show that there is no specific averment with regard to how the petitioners are concerned for the plaint schedule property, but simply stated that the petitioners are having right over the plaint schedule property and nothing is elicited with regard to suit schedule property with valid proof. In the absence of any documentary proof or valid reasons and further the application has been filed belated, though the petitioners are relation to the plaintiff. Therefore they have knowledge about the pendency of the suit. But they have not taken steps at initial stage to implead them as proper and necessary parties to the suit.

13. It is further pertinent to mention here that earlier the plaintiff in the suit has filed C.R.P.No.631 of 2021 before this Court, wherein this Court directed the court below to dispose of the suit within six months from the date of receipt of the order vide order dated 04.02.2022. But the trial court for no reason granted adjournment without disposal of the suit as per time frame

fixed by this Court. By taking advantage of the same, the petitioners filed the implead application and the same was returned with endorsements, subsequently after several months, they came up with impugned application. Therefore there are clear latches on the part of the petitioners in approaching the court below.

14. Therefore, I have no hesitation to say that the implead application is improper and not tenable. The decision relied by the petitioners is not applicable to the facts and circumstances of this case as discussed supra. In view of the aforesaid circumstances, the revision lacks merits and that the revision is liable to be dismissed.

15. Accordingly, the C.R.P is dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

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